

MONTREAL, 29th August 1829.

REPORT OF THE
HON. JAMES BABY,
Arbitrator for Upper Canada,
upon the adjustment of the Claims of
Upper Canada upon
LOWER CANADA.

BY ORDER OF THE HOUSE OF ASSEMBLY.

Printed by JOHN CAREY.

1829

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To His Excellency Sir Peregrine Maitland, Knight Commander of the Most Honorable Military Order of the Bath, Lieutenant Governor of the Province of Upper Canada, and Major General commanding His Majesty's Forces therein, &c. &c. &c.

THE REPORT of the ARBITRATOR on the part of the Province of Upper Canada, appointed by Commission bearing date the 1th January, 1823, pursuant to the seventeenth section of an Act of the Imperial Parliament of the United Kingdom of Great Britain and Ireland, passed in the 3d year of His Majesty's Reign, and entitled, "An Act to regulate the Trade of the Provinces of Lower and Upper Canada and for other purposes relating to the said Provinces."

THE Arbitrator on the part of Upper Canada repaired immediately after the receipt of his commission to Montreal, where he met the Arbitrator on the part of the Province of Lower Canada on the 20th day of January, 1823. Having communicated to each other their respective authorities, the two Arbitrators proceeded to the nomination of a third Arbitrator, and after some deliberation, their choice fell on Robert Morrogh Esq. who consented to act in that capacity and was duly appointed by an instrument dated the twenty second day of the same month.

This part of their duty being accomplished, the Arbitrators for Upper and Lower Canada then determined on going to Quebec for the sake of having a more ready access to the Public Accounts, and other documents, to which frequent references might be found necessary: and on their arrival at that City, an abstract of the Claims of Upper Canada for arrearages of drawbacks or duties under provisional agreements, was, on the 29th. January, delivered to the Arbitrator for Lower Canada, who communicated his remarks on all the claims embraced in that paper on the 3th. February.

At this stage of the proceedings an adjournment was deemed expedient, and was accordingly agreed on for an

indefinite period, owing to the difficulty experienced in obtaining information on some of the claims, and in order to give time for further investigation and enquiry.

On the 22d. day of July last the two Arbitrators first appointed having again met at Quebec, resumed the discussion of the claims of Upper Canada under provisional agreements as well as British Acts of Parliament, but as they had not agreed respecting the former class, they were under the necessity of appealing on the 21st August, to the third Arbitrator, who made known his decision at Montreal on the 27th of the same month.

The Arbitrator has now the honor to lay before your Excellency the various papers connected with the claims for arrears of Revenue, as well as other matters touched upon during the Arbitration, in the following order.

1st—Abstract exhibited by Upper Canada of claims under provisional agreements marked A. and accompanied by papers marked and numbered A. number 1 to 26,

2d—Award of Arbitrators on the claims marked B.

3d—Joint letter of the three Arbitrators to the Secretary of His Majesty's Treasury with Report of claims of Upper Canada under British Acts, marked C. No. 1. and accompanied by papers marked C. No. 2. to number 9.

4th—Determination of the three Arbitrators relative to the improvement of the Navigation of the River Saint Lawrence, marked D. No. 1. and accompanied by papers marked D. No. 2. to No. 9.

5th—Note from the Arbitrator for Lower Canada on establishing an Office of Export at Montreal, marked E. No. 1 accompanied by reply of the Arbitrator for Upper Canada, marked E. No. 2.

It will be seen by the papers marked B. that there has been awarded the Province of Upper Canada the sum of twelve thousand two hundred and twenty Pounds, seventeen shillings and six pence Currency, in full and complete satisfaction of all claims for arrearages of drawbacks under Provisional agreements between the Provinces.

1823

The Arbitrator cannot close this Report without making known to your Excellency his regret at having failed in his endeavours to impress either on the Arbitrator for Lower Canada, or on the third Arbitrator, the conviction he himself experienced of the strict justice and reasonableness of the claim which was unfortunately rejected, for a proportion of the auction duty.

The Arbitrator has also to add in explanation, that he refrained from any observations on the paper delivered to him on the 9th August, being of opinion that a discussion between the Arbitrators themselves, respecting their powers and duties, could, at that stage of

the negotiation, produce no useful result and conceiving likewise that the question, whether he had or had not conformed to his instructions, would more properly come under the consideration of your Excellency.

All which is humbly submitted.

(Signed,) J. BABY.

Arbitrator for Upper Canada

Montreal, 29th August, 1823.

A TRUE COPY.

J. BABY

A.

ABSTRACT of the Claims of the Province of Upper Canada, upon the Province of Lower Canada, on account of drawbacks or proportion of duties under agreements made and ratified by the authority of the Legislatures of the two Provinces, according to the fair understanding and construction of the said agreements :

CURRENCY.

1st—Arrears of duties for the years 1805 to 1812 inclusive,	£ 2,169 4 4
2d.—On duties collected under 53d Geo. 3d. in one thousand eight hundred and thirteen, and not accounted for to Upper Canada on articles ascertained to have passed Coteau du Lac,	6,161 10 2
3d.—On Port Wine on which an additional duty was levied, but no entry made at Coteau du Lac for more than a year, i.e. from the 15th February 1813 to the 25th April 1814	588 17 0
4th—On expiring Laws,	3,000 0 0
5th—On duties on Merchandise between 1st October, 1813 and 31st December 1814, an account of which was not begun to be kept at Coteau du Lac until the twenty-fifth April, one thousand eight hundred and fourteen,	5,394 1 2
6th—On Goods passing Coteau du Lac from first January to twenty-fifth March one thousand eight hundred and fifteen, when the Law expired, at five per cent ad valorem,	330 0 0
7th—On Merchandise purchased by the Commissariat in Lower Canada, and sent to U. Canada for the Army, Navy, Navy Yard, Commissariat, Quarter Master General's Department, &c. since first October one thousand eight hundred and thirteen of which no account has been taken at Coteau du Lac,	3,250 0 0
8th—On Merchandise passing Coteau du Lac in the years 1813, 1814 and 1815, without reporting,	6,125 0 0
9th—On account of Auction duty for 1815, the latter half of 1819, 1820, 1821 and 1822, being four years and a half.	5,190 0 0

QUEBEC, 29th January, 1823

(Signed.) J. BABY.

ARBITRATOR for Upper Canada.

Certified to be a true Copy

(Signed) JOHN MACAULEY, *Secretary.*

A TRUE COPY.

J. BABY.

A, No 1.

Remarks upon the abstract of Claims of the Province of Upper Canada, upon the Province of Lower Canada, stated by the Honorable JAMES BABY, Quebec, 29th January, 1823.

1st—From the explanation given of this claim, it appears that an opinion prevails in Upper Canada, that no part of the duties levied under the Act of 45 Geo. 3d cap. 13, was ever paid to that Province: But on reference to the public accounts in the Journals of the Assembly of Lower Canada, it will be seen that the regular proportion of duties on the imports under this Act, has been paid annually to Upper Canada, from the twenty-fifth of March, one thousand eight hundred and five (the date of the Act, continued by 51st and 52d Geo. 3d.) to twenty-fifth of March, one thousand eight hundred and fourteen, when it expired; and was again revived on the twenty-fifth of March, one thousand eight hundred and fifteen, under the Title of 55th Geo. 3d cap 3d the proportion of which Upper Canada continued to receive, founded on calculations from the Returns made by the Inspector at Coteau du Lac up to thirty-first December one thousand eight hundred and fifteen, from which time, the proportion was regulated by the agreements of thirty-first May and seventh June one thousand eight hundred and seventeen, up to first July 1819.

At Quebec, in the Quarter ending 5, June, 1811.

On Merchandise valued at	£ 16,126	12	10	5 per cent.	£ 2,306	6	8	3-4
On do. do.	136,116	7	5	2 1-2 do.	3,406	16	9	
					5,713	3	5	3-4

At SAINT JOHN'S.

Quarter to 5th Jan'y.	{	-	£ 19	4	6	{
1811, 2 1-2 per cent		-				
ditto 5. April		-	71	1	0	

93 5 6

£ 5,806 8 11 3-4

2d } These two sums have been reported
& } upon by a Committee of the Ex-
3d } ecutive Council of Lower Canada,
and paid accordingly, (see Extract
of the report) *

11th—This claim appears to be founded upon the principle that the effect of an Act which has expired does not cease with respect to the imports into Upper Canada, until some time after the date of its expiration in the Lower Province: But this principle ought not to be admitted, because if Upper Canada derives benefit from duties on goods passing into that Province, from the day an act is passed, (for instance 45th Geo. 3d, 25th March) such duties must have been allowed upon some articles which had not paid duty in Lower Canada: and it is admitted accordingly in the reasoning upon this claim, that "the articles taxed cannot come fairly into Market, before June." Therefore Upper Canada having received duties from the commencement of each Act, cannot justly claim anything beyond the duration thereof.

5th—It is admitted that Upper Canada is entitled to a proportion of duties on Merchandise from first October, 1813, to 25th April 1814, during which period no account was kept at Coteau du Lac, and the following statement shows the amount of duties received in Lower Canada during that period.

and this is the only sum upon which the claim of Upper Canada is admitted.

6th.—The remark upon No 4 applies to this.

7th.—It is not denied that a considerable quantity of Merchandise may have been purchased by the Commissariat for the service of the different Public Departments, and that some portion thereof may have been sent into Upper Canada, without being noticed at Coteau du Lac: But it appears that notice had been taken in repeated instances, and that duties were paid to Upper Canada upon articles passing in the King's Bateaux. There is however so little information to be obtained upon this subject from those offices, which could alone be supposed likely to afford it, that it seems impossible at present to come to any determination upon this claim.

8th.—On Merchandise, not reported in 1813-14-15. There is nothing before the Arbitrators that can enable them to form any calculation or even estimation on this head: therefore the same conclusion applies as on the foregoing article.

9th.—It is admitted that under the act of the Imperial Parliament, 3d Geo. 4th chap. 119, Upper Canada has a right to claim one-fifth of all duties levied in Lower Canada upon goods, wares, in merchandise, &c. imported by sea, and sold at auction since the 1st

July 1819. It will however be necessary in calculating upon the amount of sales, to distinguish between those goods which have been imported by sea, and other articles imported by land, or manufactured in the Province, the duties upon which Upper Canada has no claim to. It is very doubtful whether Upper Canada can now claim any duties on auctions prior to 1st July 1819, because the agreement entered into on the 31st May 1817, distinctly relinquished those duties, and as that Province never had received any portion of them, the express relinquishment thereof, must be considered as barring any claim prior to the date at which that agreement terminated. In admitting part of the claim as above, a further distinction should at the same time be noticed, betwixt the duties levied on auctions at Montreal and at Quebec: those duties being paid at Montreal by the purchaser, but at Quebec by the seller. In the former case the goods purchased are undoubtedly charged with the duty; but in the latter, the duty is a tax upon the importers at Quebec exclusively, and Lower Canada may consequently claim to retain the whole of the duty levied at that place.

Quebec, 8th February, 1823.

(Signed.) J. HALE.

ARBITRATOR for Lower-Canada

*Extract of a Report of a Committee of the Executive Council, Quebec, 10th March, 1819

—The amount of duties on such Goods as were subject to duty on Importation into Lower Canada under Act 53d Geo. 3d Cap. 1st, and passed Coteau du Lac, from 13th February to 31st December 1813, on the first of which days the Act came into operation according to the existing agreement, exclusive of duties on Port Wine, was

£ 5,219 4 9

The amount of Port Wine under the like circumstances, was 31,550 Gallons at one shilling per Gallon, £ 1,977 10, and as the quantity which passed Coteau du Lac is not reported, the Committee recommend that one fifth of the whole as the proportion due to Upper Canada be admitted

£ 315 10 0

3,561 11 9

The proportion of the expenses of collection }
is taken at 3 per cent. }

166 18 9

£ 5,397 16 0

Certified to be a true extract.

(Signed) J. HALE.

A TRUE COPY.

C. BABY

A, No. 2.

THE ARBITRATOR on the part of Upper Canada had the honor of duly receiving the communication made by the Arbitrator for Lower Canada on the 8 February last, relative to the abstract of claims for arrearages of revenue preferred by the former Province.

As respects the first claim, viz: for arrearages of duties from the year 1805 to 1812 inclusive, the Arbitrator for Upper Canada finds on examining the papers to which he has had access in this City, that U. Canada did actually receive her proper proportion of the duties levied on imports under the act of 15 Geo. 3d within the periods above mentioned. The doubts excited on this head in Upper Canada by the want of due information, are satisfactorily removed by the Journals of the House of Assembly of Lower Canada, which shew that the payments

made to the Upper Province under the act in question, have been regulated by the Returns of the joint Inspector at Coteau du Lac.

Passing over the second and third claims, to the principle that governed the settlement of which in the year 1819 by a Committee of the Executive Council of Lower Canada, it is not wished to object, and relinquishing the fourth claim for the effect of expiring Laws, The Arbitrator for Upper Canada now begs leave to state more fully the fifth claim amounting to £7,544 18 10, and being for duties on Merchandise between the 1st day of October 1813, and 31st December 1814, no account of which was taken at Coteau du Lac until 25 April, 1814.

By the Returns of the Inspector at Co

Coteau du Lac from the 25th April, 1814, when the Law was transmitted to him, to the 31st December, a period of 250 days, there were imported into Upper Canada Goods bearing an ad-valorem duty to the value of £139,322 9 9. Taking this for a basis, it would give from 1st October, 1813, when the law passed to the 25th April, 1814, when it was announced to the Inspector, a period of 207 days, £56,753*l.* for the value of the Goods, which added to 139,322*l.* makes 316,040*l.* paying ad-valorem duty, but this duty

was of two kinds; five per cent on goods belonging to foreign Importers, and 2 1-2 per cent on importations by residents in Lower Canada. Now from inspecting the Imports at Quebec for 1814, the Goods bearing a duty of five per cent ad-valorem, amounted in value to £622,100 12 2, and of two and a half per cent to £1,212,933 15 6 1-4, the Goods at 5 per cent being to the Goods at 2 1-2 (within a very small fraction) as 1 to 2. By taking this ratio we have,

£ 115,360 at 5 per cent	-	-	-	-	5,768	0	0
230,720 at 2 1-2 do.	-	-	-	-	5,768	0	0

Sterling 11,536 0 0

or Currency 12,317 15 6

less the sum accounted for to Upper Canada under this law, 5,272 16 8

Amount of this claim, £ 7,544 13 19

The Arbitrator on the part of Lower Canada in commenting on this head, has merely admitted our right to a proportion of £7,544 13 19, being the amount of duties collected on importations at Quebec and Saint John's, from the period when the claim commences to the 5th June 1814. It is, however, conceived that the amount due Upper Canada under this head of claims, ought not to be regulated by the receipt of duties within the period at Quebec, because it has been the practice to allow her drawbacks in conformity to the agreements, grounded on the returns of the joint Inspector at Coteau du Lac, from the date of the Acts imposing duties on Imports, and without reference to the immediate effect of such acts at Quebec. If, by the adoption of this principle, a loss may have been occasionally sustained in the first instance by Lower Canada, any such injurious effect was amply compensated when the law expired: for it cannot be disputed, that if drawbacks are now demanded on Goods bought for consumption in Upper Canada, which had not paid the ad-valorem duties at Quebec during the period referred to in this claim, large quantities

of Goods imported into Lower Canada during the existence of the law imposing the five per cent ad-valorem duty, were purchased and carried into Upper Canada after the law had ceased to be in force, and after the Government of that Province could no longer receive a proportion of the duties thus paid by the consumers in Upper Canada. The Arbitrator for Upper Canada in contending for the Justice of this claim, is yet ready to hear any suggestion which the Arbitrator for Lower Canada may have to communicate relative to the period when the Act now referred to should be considered to have taken effect. It is of course to be borne in mind, that in the event of the first day of May 1814, or any other day being fixed on subsequent to the time of its enactment for the commencement of the Law, a proportional allowance should be made for its effect after the date of its expiration.

Quebec, 22 July, 1823.

(Signed.)

J. BABY,

ARBITRATOR for Upper Canada.

Certified to be a true copy,

JOHN MACAULEY, Secretary.

A TRUE COPY, J. BABY.

A, No. 3.

THE Arbitrator on the part of Lower Canada has had the honor of receiving the paper, dated 22d Inst. setting forth anew the fifth claim of Upper Canada amounting to £7,511 13 10, being for arrears of duties levied in Lower Canada under the Act of 53 Geo. 3 cap. 11, upon merchandise between 1st October 1813 and 31st December 1814, no account of which was taken at Coteau du Lac, until 25th April, 1814.

The Arbitrator of Upper Canada having relinquished the 4th claim stated on the 29th January last, which was resisted as founded upon the principle that the force of an Act which had expired did not cease at the same time in both Provinces. The principle of the fifth claim as now stated, is not objected to; But the basis proposed for calculation, appears liable to inaccuracy from the quantity of Goods passing into Upper Canada, being probably more considerable at one season of the year than

another. It is therefore proposed to allow one fifth of the duties levied in Lower Canada under the act in question, a proportion sanctioned by both Provinces in the year 1817, and adopted by the Imperial Parliament in 1822.

The whole amount of duties levied in Lower Canada under the above Act, from 1st October, 1813, to 5 January 1815, was,

15th. -	12,193 14 2
Amount paid -	5,272 16 8
Balance	£ 7,220 17 6

QUEBEC, 30th July, 1823.

(Signed,) J. F. ALEX.

ARBITRATOR ON the part of Lower Canada.

A TRUE COPY.

J. BABY

A, No. 4.

THE Arbitrator for Upper Canada, has the honor to submit the following claims for examination by the Arbitrator on the part of Lower Canada.

Claim sixth.—For drawbacks of duties on Goods passing Coteau du Lac from 1st January 1815 to 25th March 1815, when

the Law expired, at 5 per cent, amounting to - - - £713 9 0

The whole amount of Goods which passed the Coteau du Lac in the year 1815, bearing an ad valorem Duty, was 386,317l. 3s. 5d. Currency, which gives for eighty-four days 39,027l. as the proportion which passed into Upper Canada.

da between the 1st January and 25th March. The duties on this sum being calculated according to the ratio of 1 to 2. Goods valued at 29,675*l*. must have paid 5 per cent ad valorem duty in Lower Canada; from this sum deduct 9,371 0 0. on which 5 per cent has been allowed, and there remains 23,733*l*. on which there will be a duty of five per cent amounting to - *£* 1,136 18 0
deduct 2 1-2 per cent } 718 9 0
allowed on that sum,)
And there remains 718 9 0

due Upper Canada, and to which she is fairly entitled.

This claim is founded on the opinion that the returns made by the Inspector at Coteau du Lac did not, and could not particularly distinguish Goods bearing a duty of five per cent ad valorem from those bearing only 2 1-2. It is, indeed, very evident from the extraordinary disproportion between the Goods entered at 5, and those at 2 1-2 per cent when compared with the imports at Quebec during the preceding summer, that the returns of the Inspector were in this respect, grossly inaccurate. In order to form an estimate of the injury sustained by Upper Canada under this head of revenue, the ratio which the five per cent importation at Quebec bore to the 2 1-2 per cent importation, is taken as the fairest rule, especially since the articles purchased for consumption in Upper Canada during the winter of 1815, must have been imported at Quebec in the course of the preceding summer, subject to the ad valorem duties. From the very nature of those duties it was nearly impossible that a return of Goods passing into Upper Canada could rightly distinguish between the Articles which had, and those which had not, paid the five per cent duty at Quebec, for they might have

been sold at Auction, and have frequently passed through so many hands, that the seller, much less the Upper Canada purchaser, would have been at a loss how to deliver the Inspector a correct statement.

It is therefore hoped that the Arbitrator for Lower Canada will admit the equity of this claim, founded, as it is, on the only mode of calculation which can approach the fact. It can scarcely be deemed reasonable, that Upper Canada, confining as she did in the Legislature of the Sister Province, should suffer so severely in revenue from the impracticability of rendering the returns necessary under the law imposing the ad valorem duty; a law, moreover, which was truly exceptionable in its provisions since it taxed all importations by persons not resident in Lower Canada at a double rate, without distinguishing between the Merchant of Upper Canada and the mere adventurer from Britain.

This claim would on the principle of the fourth, have been nearly dismissed, but as that principle has been relaxed by stipulation, the period for which benefit does not extend beyond the actual duration of the five per cent duty.

Quebec, 31 July, 1823.

(Signed.) J. MACAULEY

ARBITRATOR for Upper Canada

Certified to be a true copy,

(Signed.) JOHN MACAULEY,

Secretary.

A TRUE COPY.

J. F.

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A, No. 5.

Claim seventh—For drawbacks of duties on Merchandise purchased in Lower Canada by the Commissary General and other Public Officers, and sent to Upper Canada for the use of the Army, the Navy, the Naval Yards, the Quarter Master General's, Royal Engineers, and Landack Departments, &c. during the years 1813, 1814, 1815, and 1816, of which no account has been taken at Coteau du Lac.

It has been generally supposed in Upper Canada that the value of purchases bearing ad valorem duties for the service

95,000 at 5 per cent	-	-	-	-	-	-	£ 1,750	0	0
190,000 at 2 1-2	-	-	-	-	-	-	4,750	0	0

9,500	0	0
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Add to this £ 75,000 paying only 2 1-2 per cent duty	-	1,875	0	0
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11,375	0	0
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Besides the Goods paying ad valorem duties the articles subject to specific duties purchased by Government and forwarded into Upper Canada from the commencement of the American War to the year 1817 if reported at the Coteau, would have more than doubled the foregoing sum. The amount of the claim may therefore, at a moderate calculation, be set down at 20,000*l*.

Every endeavour to obtain particular proof in support of this claim has hitherto been fruitless, for the late Commissary General declares, that no distinct entry was made, or account kept of articles purchased in Lower Canada expressly for the Upper Province.

That large purchases were made in Lower Canada for the use of Government in Upper Canada, and that the greater part of such purchases were not entered at Coteau du Lac, are facts quite notorious. Reference may be had in support

of Government within that Province from 1st October, 1813, to 31st December, 1816, must have exceeded 350,000*l* part of which paid five per cent duty ad valorem, and part two and a half on being imported at Quebec. It has been already found that the duty of five per cent bore to the duty of two and a half per cent as one to two, but as the law imposing the former duty expired on the 25th March 1815, and the period of the claim extends to 31st December 1816, the amount which paid a proportion of the five per cent duty may be estimated at 275,000*l* which gives

of this assertion to the correspondence of Mr Wilson the late Inspector at Coteau du Lac, which shews that very large quantities of dutiable articles were forwarded into Upper Canada in Commissariat Pateaux without being reported, as the Agreements between the Provinces required.

Quebec, 31st July 1823.

(Signed.) J. BABY,

ARBITRATOR for Upper Canada.

Certified to be a true copy

(Signed) JOHN MACAULEY,

Secretary.

A TRUE COPY.

J. BABY

A, No. 6.

Claim eighth—For duties on Merchandise passing Coteau du Lac in the years 1813, 1814 and 1815 without reporting £ 7,825 2 0

The amount paid the Receiver General of Upper Canada as the proportion of Provincial duties levied in Lower Canada for 1813, 1814 and 1815, including arrears paid for 1813 in the year 1819, is 78,254*l.* 1*s.* 4*d.* 3-4. The Letters accompanying this statement shew, that one sleigh or carriage out of every five, passed the Coteau du Lac without reporting. Therefore, as 5: 1 :: 78,254*l.* :: 15,650*l.* 1*s.* 0*d.* But as the proportion of Boats which did not report, could not have been so great as that of the winter conveyances, (though many did undoubtedly neglect to report, particularly the Durham Boats, which frequently avail themselves of a brisk Easterly wind to sail up the Rapids at the Coteau du Lac,) one half the above sum is deduct-

ed, and the claim is thus stated at 7,825*l.* 2*s.* 0*d.*

This cannot but be regarded as a very low estimate, when reference is had to the letters, which, among other things, shew that a whole District, and that one of the most populous in Upper Canada, evaded the reports.

Quebec, 31st July, 1823.

(Signed.) J. BABY.

ARBITRATOR for Upper Canada.

Certified to be a true copy,

(Signed.) JOHN MACAULEY.

Secretary.

A TRUE COPY.

J. BABY.

A, No. 7.

In answer to the sixth claim of Upper Canada, stated by the Arbitrator for that Province in a paper, dated 31st July 1823, the undersigned Arbitrator for Lower Canada has the honour to state, that Upper Canada did receive a proportion of the "ad valorem" duties from 1st January to 25th March 1815, according to the returns made by the Inspector at Coteau du Lac, and the existing a-

greement, namely, two and a half per cent on (Sterling.) £ 52,197 8 0
and 5 per cent on 813 6 10

and those returns having been made officially, the undersigned does not feel himself called upon to question the accuracy of them,

The mode of calculating by any given

number of days, has already been objected to in the answer to the preceding claim, and as a proof how much it is liable to error, the claim No. 6 now computes, that Goods to the amount of \$9,027.11 bearing the duties before mentioned, passed Coteau du Lac between 1st January and 25th March 1815; whereas, by the returns, the amount appears to have been only \$3,933.11 currency. The small proportion of Goods paying five per cent which passed into Upper Canada, is to be accounted for by the small number of persons residing in Upper Canada, who import their own goods, most of them receiving them either from or through the houses of great Importers at Montreal, and of course paying two and a half per cent only. It is moreover not

probable, that, during the period in question, any goods imported by Merchants residing in Upper Canada, could have been passing upwards, because no importation could have taken place at Quebec later than the month of November, and the Goods would have been forwarded immediately while the Navigation was open.

QUEBEC, 1st August, 1823.

(Signed,) J. HALE.

ARBITRATOR for Lower Canada.

A TRUE COPY.

J. BABY.

A, No. 8.

THE undersigned in acknowledging the papers dated 30th July and 1st Inst. transmitted by the Arbitrator for Lower Canada, begs leave to state with respect to the proposal contained in the former, that the allowance of one fifth of the ad valorem duties levied in Lower Canada, cannot be accepted in full satisfaction of the claim of Upper Canada, as exhibited in the communication dated 22d Ult.

Whatever weight may justly be attached to the precedents afforded by the provisional agreement of 1817, and the British Act of Parliament of 1822, it is certain, that one fifth of the duties collected within eight or, at the most, nine months in Lower Canada, cannot compensate the loss of revenue sustained by the sister Province within a period of fifteen months.

It is not denied that the quantity of Goods carried into Upper Canada varies with the season, and that the value therefore of those articles which actually passed the Coteau du Lac before the Inspector was instructed to demand reports of goods liable to ad valorem duties, cannot now be ascertained in any way with perfect accuracy.

It is nevertheless submitted, that as the mode of calculating adopted in this case by the undersigned, affords the most eligible means of approximation to the truth; and as the impossibility of obtaining more complete proof, originated in the omission on the part of Lower Canada to notify the passing of the act in due time to the Officer at the Coteau du Lac, this claim ought to be favourably considered and be allowed in its full extent.

On the reply to the sixth claim, the undersigned has to observe, that if the returns from the Inspector, to which he has no access, distinctly specify the value of Merchandise passing the Coteau du Lac from the 1st January to the 25th March 1815; and if that value is found to be 58,933*l*. instead of 59,027*l*, the claim will, of course, be proportionably diminished. It is very satisfactory that the precise value of the Goods reported can in this case be ascertained. It is however conceived, that though in time of peace, when, as at present, the trade of a Country resumes its ordinary channels, the Imports of one year may be calculated with tolerable exactness, from the known Imports of another immediately following or preceding; no similar criterion is afforded to the judgment in time of war, because the supplies required by a Country situated as Upper Canada was at the period referred to, were determined by adventitious circumstances unconnected with the ordinary consumption of the inhabitants.

It is hoped that the Arbitrator on the part of Lower Canada, will not be disposed to consider the official returns of the Joint Inspector as a barrier to this or any future claim, while it is shown by the correspondence even of that Officer himself, and by other circumstances, that those returns were very defective.

The undersigned is well aware that large quantities of goods imported from Great Britain by Merchants of Upper Canada in 1814, did not remain in the Lower Province until the winter of 1815, though a few probably did—as it can be proved that several packages did remain during the preceding year. The claim rests chiefly on purchases of Goods imported by persons residing in neither Province. It is undoubtedly a misapprehension to conceive, that during the war the great resident importers of Montreal or Quebec furnished all the supplies of Merchandise required for the Upper Province. In some cases, it is true, individuals depended entirely

on their old correspondents in Lower Canada, and were from habit, averse to form new connexions in trade or to depart from their established system. Yet, such was the influx of money into Upper Canada during the years 1813, 1814 and 1815, caused in a way which it is unnecessary to explain, that vast numbers of people formerly engaged in other pursuits, turned their attention to traffic, and, with the money earned by their previous industry, purchased in Lower Canada assortments of Goods principally from adventurers, who, being anxious to close their sales and return to Europe for fresh supplies, generally held out greater inducement to the cash purchaser than the established importer. Goods were also frequently bought by such persons at Auction,—and it was a fact not of rare occurrence, that adventures were made from Lower Canada for the supply of the Army at different points on the Upper Frontiers, in which cases there is reason to believe that the stock was not often obtained from the regular Importer. These assertions might be substantiated by the evidence of many individuals, who were concerned in such transactions during the war, but the undersigned is inclined to doubt whether the amount at issue is sufficiently important to warrant the delay which the production of the testimony would occasion.

Quebec, 2 August, 1823.

(Signed.) J. BABY.

ARBITRATOR for Upper Canada.

A TRUE COPY.

(Certified.)

(Signed.) JOHN MACAULEY.

Secretary.

A TRUE COPY.

J. BABY

A, No 9.

For 7th and 8th Claims of Upper Canada stated more fully by the Arbitrator for that Province on separate papers, dated 31 July 1823, have not been supported by any material information since they were generally remarked upon by the Arbitrator for Lower Canada in his paper, dated 8 February 1823, and the Arbitrator for the Upper Province candidly acknowledges, that "every endeavor to obtain particular proof in support of this claim has hitherto been fruitless." No 7, states in detail the calculations which had brought out the sums formerly claimed, but in other respects throws no light upon the subject.

It has not been denied that some goods bearing a duty ad valorem may have been purchased by the Commissariat Department and transported to Upper Canada, but it must not be conceded as "a notorious fact," that the greater part of such purchases were not entered at Coteau du Lac; neither has the Arbitrator for Lower Canada any knowledge of the correspondence of Mr Wilson referred to as proof, "that very large quantities of dutiable articles were forwarded into Upper Canada without being reported;" but supposing that this had been the case, the obligation to report was required under severe penalties: any infraction of the Law in this respect consequently became An Act of contraband trade over which Lower Canada had no control, and therefore ought not to be responsible for it.

The correspondence of Mr Wilson late Inspector at Coteau du Lac, which has been published, leaves no room to imagine that he neglected the means in his power of obtaining the information his duty called for, and from the date of his letter of 3d December 1814, his returns of dutiable articles passing on Government account, were regularly stated monthly. In these returns Rum is invariably an article reported, and Upper Cana-

da of course received the duty upon it, and as it is well known that much, if not most, of the Rum required for the public service was imported by Government, there is perhaps quite as much reason to believe that Upper Canada received a proportion of duties upon that article which never had been paid upon the importation at Quebec, as that any loss had been sustained by that Province by the neglect or evasion of regular entries at Coteau du Lac. In the returns above mentioned no entry appears of dry goods bearing an ad valorem duty, and there is no reason to suppose that it was an omission either wilful or accidental. Indeed, it is much to be doubted, whether any considerable quantity of goods bearing that duty, ever was purchased in Lower Canada for the public service: the most expensive goods certainly were not, the Clothing for the Army and Navy, Bedding, Arms, Ammunition and Naval Stores being imported by Government from England, and of course did not pay duty.

The Claim No 8, now stated at a sum of 7,325*l.* 2*s.* 0*d.* is equally defective with No 7 in affording any information worthy of notice in support of its merits, and the "Letters" which are referred to as evidence appear to be reduced to a single letter from an obscure Individual, who states that during a period of nine months, he "thinks, that one out of five Sleighs and Trains did not report themselves." There are indeed two other Letters from well known and respectable Merchants, which express a strong belief that considerable quantities of dutiable articles had passed into Upper Canada without reporting, and one of them relates a single instance of a loaded Sleigh having been stopped by a Centinel on it's way to the Port of Entry. These circumstances, however, are not of sufficient strength to support claims of such magnitude as those now made, and be-

yond these nothing appears but general supposition and assertion. The undersigned therefore is under the necessity of representing, that with respect to the seventh and eighth claims, he should not feel himself justifiable in giving any assent, and consequently the intervention

of the third Arbitrator seems to be unavoidable.

QUEBEC, 2d August, 1823.

(Signed.)

J. HALE,

ARBITRATOR for Lower Canada.

A TRUE COPY.

J. BABY.

A, No. 10.

The undersigned Arbitrator for Lower Canada, has the honor to acknowledge the receipt of a paper dated 2d instant, resuming the discussion of the fifth and sixth Claims of Upper Canada. On the first of those claims, the difference between the amount claimed and the sum proposed to be allowed, being little more than three hundred pounds, the undersigned would have felt disposed to let this question rest upon its own merits without further argument; but when the Arbitrator for Upper Canada represents

- “that one fifth of the duties collected
- “within eight or the utmost nine months
- “in Lower Canada, cannot compensate the loss of Revenue sustained
- “by the sister Province within a period of 15 months,”

the undersigned cannot help imagining that some misunderstanding exists; for it was his intention to allow to Upper Canada one fifth of the duties collected between the 1st October 1813 and 5th January 1815, and so he finds it stated in the copy of his paper dated 30th July last.

To the remark upon his answer to the sixth claim, the undersigned replies, that the return of the Inspector at Coteau du Lac, upon which his statement was

founded, shall immediately be laid before the Arbitrator for Upper Canada; and this should have been done sooner, had not the undersigned concluded that the Arbitrator for Upper Canada would have had access to the counterparts of all those returns, which of course were in existence in Upper Canada as is provided for by the agreement for the time being. The undersigned does feel himself bound to consider the returns of that office as barring every claim that they do not bear witness to, unless some distinct and specific proof be produced, that they are defective; and although one deficiency in those returns has been readily admitted, in the instance of the fifth claim, the undersigned begs leave to offer some qualification of the remark, that the “impossibility of obtaining more complete proof, originated in the omission on the part of Lower Canada, to notify the passing of the act in due time to the officer at the Coteau du Lac.” The act in question (53d Geo. 3d cap. 1.) had been reserved for the signification of His Majesty’s pleasure, and it was notified by a Proclamation dated 1st October 1813, that it had received the Royal assent; a notification which the undersigned conceives to be as formal as any public officer can

quire, and the most proper that could be given to one who was the joint Servant of two separate Provinces. Some further new matter brought forward in the paper now under consideration, is the assertion, that vast numbers of people who had acquired money during the war, purchased Goods in Lower Canada instead of receiving them through the usual channels. This it is unnecessary to contest, because, what does it prove? Is it to be assumed or believed, that an inhabitant of Upper Canada, who might have purchased Goods from an adventurer at Quebec or Montreal, would run the risque of incurring the penalty for neglecting to report the particulars of his purchase at the Port of Entry into Upper Canada, and defraud the Revenue of his own Province without any benefit to himself? He had none of the tempting induc-

ments which contraband trade between separate States hold out, for he had no duties to pay. In short the more this question is investigated, the more improbable and incredible does it appear, that any irregular importation of consequence took place; and the undersigned is compelled in justice to Lower Canada, to dissent from all those calculations and computations which rest upon no more solid foundations.

Quebec, 14th August, 1823.

(Signed.) J. HALE.

ARBITRATOR, for Lower Canada.

A TRUE COPY.

(Signed.) J. BABY.

A, No. 11.

The under-signed Arbitrator for Upper Canada, has the honor to state for examination by the Arbitrator for Lower Canada, the ninth claim as follows.

For Auction duties from the year 1805 to December 1816 inclusive, being 12 years. 8,107*l.* 6*l.* 10

The duties on Goods sold at auction in Lower Canada, levied under the 15th Geo. 3d cap. 13. 51 Geo. 3 cap. 1. and 55 Geo. 3. cap. 3. from the year 1815 to the 31st December 1816, amounted to 42,336*l.* 11*s.* 2*d.* of which one fifth would be 8,107*l.* 6*s.* 10*d.*

The foregoing claim as stated in the abstract, originally embraced the latter half of the years 1819, 1820, 1821 and 1822, for which period the Arbitrator on

behalf of Lower Canada, admitted, that Upper Canada was entitled under the British Act of 1822, to receive a proportion of one fifth of all duties on sales made at Auction, of Goods imported by Sea into Lower Canada. This part of the claim has however been withdrawn, because it does not fall within the scope of any provisional agreement, & is therefore to be demanded by the Executive government of Upper Canada, instead of becoming a subject for discussion under the present Arbitration. The claim has also been extended for the year 1805, including ten years, which were not noticed from causes which will hereafter appear.

The Arbitrator for Lower Canada in his remarks dated eighth February last, considers it doubtful, whether Upper

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Canada can now claim any duties on auctions prior to 1st July 1819, because the agreement entered into on 31st May 1817, distinctly relinquished those duties, and as that Province never had received any portion of them, the express relinquishment thereof must be considered as barring any claim prior to the date at which that agreement terminated.

In reply to this objection it is observed, that Upper Canada had relied with the fullest confidence on receiving from the government of Lower Canada, her just proportion of all duties levied on Goods by the Legislature of that Province, and was not even aware of the existence of the Auction duty, prior to the year 1815, when the original law of 1805 was re-enacted. Owing to the want of the requisite knowledge on this point, the claim therefore originally commenced with the year 1815, & it was not until the Laws & the Journals of the House of Assembly of Lower Canada had been submitted to the inspection of the undersigned, that he became informed of the previous exaction of an auction duty for the long period of ten years. The Commissioners for Upper Canada did indeed relinquish the auction duty by the stipulation contained in the agreement dated 31st May 1817, to which service they were induced to consent by a desire to terminate the discussions respecting Revenue on a amicable manner. This relinquishment, however, it is to be particularly marked, was only of a corresponding duration with the agreement itself, and neither had an anterior nor a prospective effect beyond the period referred to by the positive terms of the agreement. The arrearages due on agreements of a previous date, do not appear from the agreement dated 31st May, to have ever come under consideration on that occasion. They are, however, alluded to in the subsequent stipulation dated on 7th June 1817, when, as it would appear, from the documents signed at Montreal by the Commissioners of Upper Canada on 9th July 1821, the Commissioners for Lower Canada, declined entering into "the investigation of any claims for arrearages previous to that year, (viz: 1817) giving for a reason that

"the act by which they were appointed, did not give them authority so to do, and that their powers were only prospective." The Commissioners for Lower Canada also declare in the paper dated 11th July 1821, "that they receive every agreement once ratified, must be considered as final for the period which it embraces, and cannot of again be entered up on by any future Commissioners without special instructions to that effect," with which it seems they were furnished. These references prove, that there was no relinquishment of arrearages of duties, either expressed or implied in the agreements of 1817. But a strong confirmation of the claim here advanced, is to be found in the agreement of June 1817, wherein it is expressly declared, at a period antecedent subsequent to the stipulation respecting the auction duties, which were relinquished for two years and a half, that the sum of £5500 due to Upper Canada from 1st January 1816 to the 1st January 1817, in addition to the sum of twenty thousand pounds already paid, should be "without prejudice to any claims which Upper Canada might have for any arrearages due previous to the year 1816." The undersigned therefore does not perceive with what propriety a relinquishment of auction duties for three years agreed to on a particular occasion and for particular reasons by persons having no power to settle claims of a previous date, can be regarded as barring all right to arrearages claimed for a period antecedent to the date of that relinquishment. That Upper Canada is entitled to a just proportion of the Auction duty, is manifest on referring to the first and second Articles of the ratified agreement entered into at Montreal, on the 26th January 1797, by virtue of which Upper Canada, for failing to impose duties on Goods, Wares and Merchandise imported into Lower Canada, and on all articles the growth, produce or manufacture of Lower Canada passing into Upper Canada, allows and admits the legislature of Lower Canada to impose and levy such reasonable Duties on such Goods, Wares and Merchandise &c. as they may judge expedient for the purpose of raising a

Revenue within the Province of Lower Canada, on condition that the Legislature of the latter Province shall allow a just proportion of the duties imposed by them, to be paid to Upper Canada. This just proportion was to be regulated according to the consumption by a mode prescribed in the subsequent articles of the agreement. It was naturally imagined that the important power of taxation thus conceded to the legislature of Lower Canada, would have been exercised with due circumspection and regard for the rights and interests of the sister Province, and that no duties would have been levied on goods, wares or merchandise without allowing Upper Canada her just proportion, estimated according to her consumption and to the fair understanding and construction of the agreement.—Nevertheless, by the Act of parliament of Lower Canada 15 Geo. 3d, specific duties were imposed on certain enumerated articles, and a general duty on sales at Auction both for purposes purely local; and though the revenue thus created was professedly designed for one and the same object, and was levied on goods, wares and Merchandise, the Joint Inspector at the Coteau du Lac, was required in his returns to state merely the articles subject to specific duties, and not those also which had been subject to the Auction duty. Thus, while many articles of Merchandise, which were purchased at Auction annually, passed into Upper Canada, the Government of that Province did not receive its just proportion of the duties levied on those articles. The inhabitants of Upper Canada having paid duties on goods sold at Auction and purchased by them, their title to a just proportion thereof is clear. It is founded on the plain meaning of the agreement of 1797, and ought not to be defeated by any failure on the part of Lower Canada, to furnish the Inspector at the Coteau du Lac with the information, without which that proportion could not be regularly obtained.

With regard to the distinction taken by the Arbitrator for Lower Canada between the modes of collecting the Auction duty at Quebec and Montreal, it is conceived, that the right of Upper Canada is not thereby affected. It is not considered a matter of any moment by what individual or in what way the duty is paid to the Receiver General of L.r. Canada; for whether it be taken from the seller or the purchaser, the article sold is naturally charged with it, and it falls ultimately on the consumer. Instances may indeed be cited of occasional sacrifices made at an Auction sale, yet it more frequently happens that the seller desires some profit from the transaction, otherwise Auction sales, would neither be so extensive nor of such frequent occurrence as they now are. It is a generally received maxim, that every charge which enhances to the Proprietor the cost of an article of Merchandise, is transferred with it to the Purchaser and consumer, and a general and established rule is not to be controverted by a particular exception.

The amount of this claim is set down at 3,107*l.* 6*s.* 10*d.* but is of course liable to any reduction or augmentation which circumstances may justify.

Quebec, 4 August, 1823.

(Signed.) J. BABY.

ARBITRATOR for Upper Canada.

Certified to be a true copy.

(Signed.) JOHN MACAULEY,

Secretary.

A TRUE COPY.

J. BABY.

A, No. 12.

The undersigned Arbitrator for Lower Canada, has to acknowledge the receipt of the ninth claim, brought forward by Upper Canada for a proportion of duties upon goods, sold at Auction from the year 1805 to 1816 inclusive, amounting to 8,107*l*. 6*s*. 10*d*.

The undersigned does not think it necessary to enter at large into a further discussion of this claim, because he still views the subject in the same light as on a former occasion, when he gave his opinion, "that the express relinquishment of Auction duties by the agreement dated 31st May 1817, must be considered as barring any claim prior to the date at which that agreement terminated." The concluding passage of that agreement, which, after settling the sum then due to Upper Canada, declares,

"That the same shall be without prejudice to any claims which Upper Canada may have for any arrears, & due previous to the year 1815," must not be considered as bearing upon the claim now stated, because the term "arrears" can only apply to the settlement of known and acknowledged dues, and the Auction duty had never been considered as a part of the Revenue which Upper Canada was entitled to share.

The Arbitrator for Upper Canada endeavours to account for the silence of that Province, under the privation of those duties, during the long period of ten years, by saying, that Upper Canada was not even aware of the existence of the auction duty prior to the year 1815:—The statement of this circumstance may seem to imply, that concealment had been practised by Lower Canada; & the same idea appears to be conveyed by the argument, that the "plain meaning of

"the agreement of 1797, ought not to be defeated by any failure on the part of Lower Canada, to furnish the Inspector at the Coteau du Lac with the information without which that proportion could not be regularly obtained." The undersigned therefore thinks it proper to point out, that by the agreements existing from 1797 to 1817, it was provided that Upper Canada should be annually furnished with accounts of all duties then existing, or afterwards to be imposed; & if those accounts were not so furnished, upon which point, the undersigned is not informed, Upper Canada might have called for them, being the party most interested in the information they contained. But no failure in this respect could be of the least consequence. The very nature of the duties rendered it impossible for any account of them to be taken at Coteau du Lac, under the system so long acted upon. And it is remarkable, that, at the same moment when that system was abandoned, & a principle adopted which afforded the means of ascertaining with precision any proportion that might be decided upon, the duties in question were specifically relinquished. Such a coincidence almost amounts to an admission, that those duties never were in contemplation, as part of the Revenue of Upper Canada, and strongly confirms the undersigned in his opinion, that no retrospect can be assented to.

Quebec, 6th August, 1823

(Signed,) J. HALL

ARBITRATOR for Lower Canada.

A TRUE COPY.

E. BABY

A, No 13.

The undersigned has had the honor of receiving from the Arbitrator for Lower Canada, the several papers dated the 2d, 4th and 6th instant.

He has to remark, that, in submitting the seventh claim, he felt himself called on to state distinctly the impressions which prevailed in Upper Canada, relative to the quantity of dutiable articles imported into that Province for military and other public purposes, without being reported. The injury thereby done to the revenue of Upper Canada, may possibly be over-rated, and the undersigned being well aware, as was signified in producing the claim, that it did not rest on such particular proof as it was desirable to offer, never indulged in any expectation of recovering all which is considered to be due from Lower Canada on this head.

The undersigned still thinks that the published correspondence of Mr. Wilson to which he formerly referred, bears out the assertion, that merchandise of considerable value passed the Coteau du Lac unreported, in Government Boats, and this opinion is strengthened by the circumstance alluded to in communication from the Arbitrator for Lower Canada, viz. that no entries of articles subject to ad valorem duties are contained in the returns of those Government Boats, the cargoes of which were actually reported. This omission was probably, as the Arbitrator for Lower Canada observes, "neither wilful nor accidental," but arose from causes which are partly explained by Deputy Commissary General Clark, in his published letter to Mr. Wilson.

On the eighth claim, the Arbitrator for Upper Canada has to say, that though the letters adduced in its support do not expressly declare the precise amount of unreported goods, the property of individuals carried past the Coteau du Lac

in 1813, 1814 and 1815, they at least shew, that large, though indefinite quantities were thus introduced into Upper Canada, and establish the fact, that the object of the agreement between the Provinces, was frustrated, and its provisions evaded. The exception taken to one of these letters, calls on the undersigned to declare, that had he not placed complete reliance on the credibility of the writer, it would not have been produced; other letters or evidence on oath, can be obtained in further support of this claim, but unless the Arbitrator for Lower Canada, shall feel himself at liberty to receive such evidence as the case will admit; unless he will allow as a fair basis, the testimony of individuals worthy of belief, explaining what may have come within their knowledge on the subject of this claim, and stating circumstances on which a calculation of the loss sustained by Upper Canada may be established with a reasonable degree of accuracy, it is in vain to prolong the discussion without the aid of the third Arbitrator. The very nature of the claim renders the production of more distinct testimony impracticable.

The undersigned meant, in objecting on the 2d instant to the allowance which the Arbitrator for Lower Canada proposed in satisfaction of the fifth claim, that the peculiar circumstances under which the ad valorem duty took effect, prevented receipts of any moment at Quebec until the summer of 1814, while Upper Canada had a right to the drawbacks from 1st October 1813, to 31st December 1814, a period of fifteen months.

It may be added, that if the consumption of Upper Canada, at that particular time, had been accurately valued, her true proportion of the duties would have far exceeded the whole receipts at Quebec. The objection, however, was not so much urged on account of the sum at issue, which is inconsiderable, but be-

cause the principle of the calculation was not approved of.

With respect to the reduced amount of the sum on which the ad valorem duty of five per cent, was calculated in the sixth claim, the undersigned has to acknowledge the opportunity of rectification afforded him by the Arbitrator for Lower Canada, in examining the copy of the Inspector's returns in his possession.

The Arbitrator for Upper Canada does not feel disposed positively to deny, that the publication of the Act of 53d Geo. 3d, cap. 11, by proclamation, was a notification of its existence sufficiently formal for a public officer, who was the joint servant of two separate "Provinces;" yet the law was the sole act of one of the Provinces, and as its provisions materially affected the interests of the other Province, something more than the printing of a Proclamation seemed requisite to enable that joint officer to perform his duty. Though it was not provided for by any express article of the agreement, it would still seem necessary for its just effect, and be indeed a matter of course, that Lower Canada should transmit copies of every new revenue law without delay to the Inspector, as the mere general publication of the existence of a Law, or even the enclosing of the Proclamation, would be insufficient for his guidance without instructions or a copy of the law itself. But it appears inexpedient to pursue this subject, since the occasional failure in forwarding such instructions or laws in whatever way it occurred, was no doubt purely accidental, and the loss which it unfortunately caused Upper Canada, is the main point for consideration.

While on the merits of the sixth claim, it is to be observed, that the ad valorem duties were in themselves so difficult of distinction, after the articles on which they had been levied had passed from the hands of the Importer, and were so liable to be erroneously reported at the Coteau du Lac, that the fixed resolution expressed by the Arbitrator for Lower Canada, in his paper dated 14th instant, to consider the returns of the Inspec-

tor at Coteau du Lac as barring every claim that they do not bear witness to, unless some distinct and specific proof shall be produced that "they are defective," bears on Upper Canada with peculiar severity.

The "new matter" brought forward by the undersigned on the 2d instant, though it may have appeared irrelevant, was designed to shew, that Upper Canada did not as the Arbitrator for Lower Canada may have supposed, receive nearly all its supplies of merchandise during the war from the great Importers at Montreal, thus paying two and a half per cent duty only. If the assertion of the undersigned, which it has been conceived unnecessary to contest, were admitted, it might perhaps prove, that goods of considerable value, which had been subject to the five per cent duty, were consumed in Upper Canada. One third of the Merchandise imported at Quebec under the ad valorem act, belonged to the now-resident Merchant, and the Upper Canada Trader, in making his purchases, would not uniformly prefer the goods of the resident Importer, as the difference of the duties did not affect very sensibly the price. On the contrary, he generally made his selections, if he had cash in his hands, where the prices were most favorable, which from evident causes, would be at the Warehouses of transient Importers and at Auction Rooms. It is reasonable to believe from these circumstances, that on a fair estimate, the goods at five per cent duty, bought for consumption in Upper Canada, would bear the same, or very nearly the same, proportion to the goods at two and a half, which the two descriptions of goods bore to each other when imported at Quebec.—Hence the Returns of the Inspector at Coteau du Lac, could not have truly stated the proportion of merchandise at five per cent for the period ending on the 25th March 1815, and Upper Canada has consequently a right to the amount of the sixth claim.

As respects the risk which it is imagined the individual not reporting at the Coteau du Lac incurred, it need only be

inquired, whether any instance can be mentioned of punishment having been inflicted for similar evasions of the Provincial agreements. At the period under consideration, there was probably not one person in a hundred who was aware of the liability to a penalty in such cases, and it is very questionable whether the fact is now, or was ever at any time, better known. The chief inducement to pass the Coteau du Lac, without calling at the Inspector's Office, was to avoid detention and the chance of being impressed to transport Government Stores, an inducement which would even have prevailed over the consideration of the light penalty they might incur by shunning the Inspector, had the existence of it been a matter of notoriety. It frequently happened that the owner of the goods was not with them on the passage upwards, and as frequently when he did accompany them, that the idea of injury being done to the Revenue of the Upper Province by his evading the reports, did not occur to him. This was, in fact, a matter, which, in those busy times, few meddled with, or reflected upon, and which in particular dwelt very seldom in the minds of those who were charged with the transport of Merchandise into Upper Canada.

In whatever light breaches of certain provisions in the agreements between the Provinces may be regarded, whether as caused by defects in the agreements themselves, or as acts of contraband trade, Upper Canada has been deprived of Revenue, and in proportion as she has suffered, the Sister Province has gained.

The undersigned is under the obligation to dissent from the principle assumed by the Arbitrator for Lower Canada, that because individuals who failed to report, were liable to a penalty, such failure or infraction of the law was an act of contraband trade, for the consequences of which Lower Canada, as she had no control over, should not be responsible. If, by the Agreements between the Provinces, Upper Canada was entitled to drawbacks of Duties levied on goods imported into Lower Canada; if

the Returns by which the just proportion of those duties was to be ascertained, were shewn in more than one instance to be defective and erroneous; if it be the duty of the present Arbitrators "to hear and determine all claims of the Province of Upper Canada upon the Province of Lower Canada, on account of drawbacks or proportion of duties, under agreements made and ratified by the authority of the Legislatures of the said two Provinces, according to the fair understanding and construction of the said agreements," common justice and equity require that the claims of Upper Canada should not be set aside, because the agreements were too often rendered nugatory by acts over which neither Province had any efficient control. Though Lower Canada might not be responsible for these acts, she ought not to avail herself of any infraction of the law, in order to withhold such amount of duties as may with tolerable accuracy, be found fairly due the Upper Province, in consequence of these infractions.

In noticing the reply made to the ninth and last claim of Upper Canada under Provincial agreements, the undersigned has to regret the disinclination manifested by the Arbitrator for Lower Canada, to enter into any further discussion relative to the Auction duties, on the ground, that his former determination remains unaltered.

The undersigned also begs leave to disclaim all acquiescence in the application given to the term *arrearages*, as it is represented to have been used in the agreement of 1817, since, in his opinion, that expression referred to a proportion of every duty previously levied on importations &c. whether claimed or known, denied or acknowledged.—Without this liberal and just construction, the remedy provided by the Imperial Parliament, could not produce the satisfactory adjustment of the claims of Upper Canada which was truly intended, but would, on the contrary, confine the attention of the Arbitrators to the points formerly agitated, instead of taking up the claims, which, on further investigation, might be

being put forward for particular duties of which that Province had received no proportion, and of determining "those" which may not have been embraced within the terms of any provisional agreement.

Besides there is no reason to believe, from the Commissioners of Lower Canada in 1817, considered the arrearages claimed by the Commissioners on the other side, or any part of them, as a drawback.

Admitting, however, for a moment that the term as applied in 1817, does not bear on the present question, the circumstance that "the Auction duties had never been considered (in Lower Canada) as a part of the Revenue" which Upper Canada was "intitled to share," though it may shew why that share was withheld, does not destroy in any way, or get the claim. It still remains with Upper Canada under the present Arbitration, to demand a just proportion of the Auction duty, or of any other duty on goods passing from Lower to Upper Canada, which the undersigned may discover to have been from any cause withheld. The agreement from 1797 to 1817, provided that Upper Canada should receive her just proportion of all duties levied on goods in Lower Canada, and if it be ascertained that any part of a particular duty, or the whole proportion of it, has not been allowed, that part or proportion, though never before claimed, forms an arrearage on the agreement. It is that portion though due, remains unpaid on an agreement, and as such rightfully belongs to Upper Canada.

The undersigned in accounting for the silence of Upper Canada under the long privation of the Auction duties, was far from meaning to imply, that any concealment had been practiced by Lower Canada. However much he may have differed from the Arbitrator for Lower Canada, in thinking that the natural confidence of Upper Canada in the justice of the sister Province, should have been

disappointed by the omission of the latter to furnish such information respecting its own Acts, as was absolutely necessary to render its previous stipulations of any value.

The undersigned is at a loss to discover the article referred to, as providing from 1797 to 1817, that "Upper Canada should be annually furnished with accounts of all duties then existing or afterwards to be imposed." But admitting that such a provision was in force, was it complied with on the part of Lower Canada? or must the omission of Upper Canada to seek the information alluded to, caused as it was by a confidence in Lower Canada, and preceded by an omission on the part of the latter Province to furnish it, bar the claim for drawbacks on the present occasion?

The Arbitrator for Upper Canada was not prepared to hear it contended, that the failure on the part of Lower Canada to notify the imposition of new duties under the alleged existing stipulation, "could not be of the least consequence, because the very nature of the auction duties rendered it impossible for any account of them to be taken at Côteau du Lac under the system, so long in use." Upper Canada then is by the operation of this rule, to be deprived of Revenue, because Lower Canada may have devised a duty on Goods which baffled the Inspector at Côteau du Lac, and could not be accurately reported. But while the equity of this rule may be questioned, it appears to the undersigned, that the drawbacks of the Auction duty might have been as easily ascertained as in some other instances, and there clearly would not have been a greater risk of inaccuracy in the reports of that duty than experience has shewn there was in the returns of the ad valorem duties.

Remarkable as it may appear to the Arbitrator for Lower Canada that duties were expressly relinquished at a time when their amount could have been as-

certained with most precision, it does not at all amount to an admission that those duties were never in contemplation, since the formal, though *prospective* relinquishment proves the contemplation; and the inference is, that the desire formerly stated of bringing the discussion to an amicable close, aided, perhaps, by the urgent wants of the Upper Province, induced its Commissioners to relinquish the duties in question expressly for a given period, without prejudice to any claims of a retrospective nature.

The undersigned by way of elucidating some parts of the statement he has lately had the honor to make, begs leave to lay before the Arbitrator for Lower Canada, four tables of calculations: and he has also to suggest the ex-

pediency of submitting the points of difference, which, otherwise, there is no prospect of settling, to the consideration of the third Arbitrator.

Quebec, 8th August, 1823.

(Signed.) J. BABY.

ARBITRATOR for Upper Canada.

Certified to be a true copy.

(Signed.) JOHN MACAULEY.

Secretary.

A TRUE COPY.

J. BABY.

A, No. 14.

The undersigned Arbitrator for Lower Canada has had the honor to receive from the Arbitrator for the Upper Province, a paper, dated 8th inst. containing further arguments in reply to the communications of the undersigned dated the 21, 4th and 6th instant.

The undersigned entirely acquiesces in the necessity of referring the whole of the claims hitherto discussed, to the determination of the third Arbitrator; and he is the more convinced that such a reference is unavoidable from the admission, that the Arbitrator for Upper Canada never indulged any expectation of recovering all that was considered to be

due. From this admission a question may possibly arise, how far the Arbitrator for Upper Canada may have been authorized to set forth the claims of that Government in the manner he has done; the commission of Arbitrator not necessarily comprehending, but, on the contrary, being in the opinion of the undersigned, quite inconsistent with that of a claimant or of an advocate. And this particularly applies to the claim for duties on Auctions, which was not mentioned among those stated to His Excellency Sir John Sherbrooke, in 1817, or to Sir Peregrine Maitland in 1821. The undersigned has only to add, that an agreement published in the appendix to

the resolutions of the Legislative Council and House of Assembly of Upper Canada in 1822, contains the article referred to, as providing for the accounts to be furnished to Upper Canada; but it has since been pointed out to him that the date of that paper, which purports to be 8 February 1797, is errone-

ously printed and should be 1795.

Quebec, 9th August, 1823.

(Signed.) J. HALE.

ARBITRATOR for Lower Canada.

A TRUE COPY.

J. BABY.

J. BABY.

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BABY.

A, No 15

THE Arbitrator for Upper Canada has the honor to enclose the third Arbitrator, Letters No. 4, 5, 6 and 7, containing matter which will be found to support the 8th and 9th claims, referred for decision by the Arbitrators of the two Provinces.

The Invoices prove, that goods were commonly bought at Auction to a considerable extent in Lower Canada, for consumption in the Upper Province. The only fact which it was intended to establish on that head, since no diligence of research could ascertain by any means, the exact amount of such purchases during the period of the claim.

It will also be seen, that the proportion of goods which were not reported, is rather higher in the letters than in the eighth claim.

Further evidence might still be obtained, were the statements of the undersigned unsupported by sufficient testimony.

MONTREAL, 23d August, 1823.

(Signed.) J. BABY.

ARBITRATOR for Upper Canada.

Certified to be a true copy.

(Signed.) JOHN MACAULEY.

Secretary.

A TRUE COPY.

J. BABY.

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A, No. 16

TABLE FIRST.

SHewing the proportion of the Provincial Revenue raised by Duties at the Port of Quebec, and paid over to Upper Canada under Provincial Agreements for the following Years.

Years.	Gross amount of receipts at Quebec						One eighth of the amount.			Actual Receipt by Upper Canada.		
1795	7712	10	9	-	-	-	967	16	2	1117	19	0
1796	10017	18	10	-	-	-	1252	4	7	1010	10	0
1797	7595	18	8	-	-	-	949	9	9	1206	11	7
1798	11594	1	11	-	-	-	1449	7	9	1262	0	5 ¹
1799	15180	19	1	-	-	-	1897	12	1	1560	8	0
1800	12061	19	1	-	-	-	1508	2	5	1003	13	1
	61196	4	7				3021	13	0	7191	2	1

The difference of these two columns may be considered the expense of collection

* This year includes some arrears of duties on wines.

Quebec, 8th August, 1823.

(Signed.) JOHN MACAULEY.

Secretary to the ARBITRATOR for Upper Canada.

A TRUE COPY.

J. BABY.

A, No. 17.

TABLE SECOND.

Showing the proportion of the Provincial Revenue raised by duties at the Port of Quebec and paid over to Upper Canada, under the Provincial Agreements founded on the Returns of the Inspector at the Coteau du Lac, and the loss sustained by Upper Canada in changing from the former agreement of one-eighth.

Actual Receipt by
Upper Canada.

17	19	0
10	10	0
06	11	7
62	0	5
60	8	0
03	13	1

of collection

per Canada.

Years.	Gross amount of Receipt at Quebec.				Actual Receipt of Upper Canada.			Pro- portion	The amount had the agreement of 1-8th continued.			Difference or loss.		
1891	15535	19	4		1069	3	11-2	1-14	1944	9	11	875	6	9 1-2
1892	16 93	4	6		1172	9	2	1-14	2024	8	0 3-4	851	18	10 3-4
1893	17596	0	6		1419	5	7 3-4	1-12	2198	16	0 3-4	779	10	5
1894	19713	1	1		1414	6	8	1-14	2464	10	0	1050	3	4
1895	2166	15	4		1364	13	10	1-23	3958	1	11	2593	8	1
1896	23744	0	0		2397	16	4 1-4	1-10	3218	1	0	1820	4	7 1-2
1897	23760	12	11		2650	7	11-2	1-9	3220	1	5 3-4	569	14	4 1-4
1898	22451	18	9		4645	10	3	1-6	3678	19	10	—	0	0
1899	47741	6	10		4405	7	10 1-2	1-10	5968	16	10	1563	2	11 1-2
1900	55336	13	10		4518	1	5	1-11	6663	14	2	2145	12	7
1901	54590	10	0		3304	10	3 1-2	1-14	6824	16	3	3020	5	11 1-2
1902	15376	4	8		5491	0	7 1-2	1-13	5672	0	7	2270	19	11 1-2
	32605	0	9		12262	12	4 3-4	1-11	17306	10	11-4	17540	7	11 1-2

From this table it appears that Upper Canada sustained a loss during this period, from changing her proportion from one eighth to such a sum as might be predicated on the returns of the Inspector of the Coteau du lac, to the amount of 17,540/ 7s. 11 1-2 which was the more grievous as her increasing population entitled her to more than one-eighth.

The average proportion of duties paid to Upper Canada was during this period, less than one-eleventh, being within an insignificant fraction one-twelfth.

The great inaccuracy of the returns

afforded by the Inspector of the Coteau du Lac, is made evident by their inadequacy to the actual increase of population and by the peculiar disproportion of some years.

Quebec, 8th August, 1823.

(Signed.) JOHN MACAULEY,

Secretary,

to the ARBITRATOR for Upper Canada

A TRUE COPY.

J. BABY.

A, No. 18.

TABLE THIRD.

SHOWING the proportion of the Provincial Revenue raised by duties at the Port of Quebec and paid over to Upper Canada under Provincial Agreements, founded on the Returns of the Inspector at Coteau du Lac.

Years.	Gross amount.				Actual receipt of Upper Canada.				Proportion.	The amount had the agreement of one-eighth continued.			
1843	79103	11	8		6386	2	10		1-4-10	9839	3	11	1-2
1844	169690	5	4		39250	2		9 1-2	1-4	21085	0		3
1845	122211	12	4		27217	1		9 1-4	nearly 1-4	15280	11	6	1-2
1846	109563	10	8		21584	17	6		nearly 1-5	13767	18		10
Total £	479602	40	00		14136	7	10 3-4		1-5	59962	15		00

On this Table it is to be remarked, that the Returns of the Inspector at the Coteau du Lac contrary to every former year, yield a greater revenue than one-eighth, for though 1843 appears less, yet the arrears already paid on that year raises it to more than one-eighth exclusive of the claim still remaining.—At the commencement of the war, greater attention was paid to his duty by the Inspector, though much escaped him besides the Brigades of Sleighs, Boats, &c.

loaded by the Commissariat, which were never reported.

Quebec, 8th August, 1823.

(Signed.) JOHN MACAULEY.

Secretary to the Arbitrator
for Upper Canada.

A TRUE COPY.

J. BABY.

TABLE FOURTH.

REMARKS ON THE PROPORTION OF ONE-FIFTH.

The Revenue paid over to Upper Canada in 1817, the first year of the agreement last concluded between the Provinces amounted only to

£ 16,653 9 6

Now during that year dutiable articles passed the Coteau du Lac amounting, exclusive of 14 Geo. 3, to
In that year the total proceeds of 14 Geo 3, amounted to £ 14,503 12s. 10d. currency, of which one-fifth is

17,728 2 5

2,900 12 0

20,628 14 5

16,653 9 6

3,975 4 11

Deduct the sum actually paid to Upper Canada being one-fifth }
of Nett Revenue.

By which it appears that Lower Canada gained by this agreement, the sum of 3,975*l.* 4*s.* 11*d.*

From this statement it is evident, that were it possible for Upper Canada to collect her own duties, her Revenue would be much greater than the proportion allowed by the agreement of 1817. But knowing that the nature of the boundary line renders it impracticable, Upper Canada has always been passive and desirous of agreeing, at all hazards, with

Lower Canada, as every agreement will abundantly testify.

Quebec, 8th August 1823.

(Signed.) JOHN MACAULEY.

Secretary to the Arbitrator

for Upper Canada.

A true Copy.

J. BABY

A, No. 20.

Quebec, 30 January, 1823.

Sir,

Having been appointed Arbitrators on the part of Lower and Upper Canada, under the act of Parliament, 3 Geo. 4 Cap. 119, we deem it necessary to request of you, to furnish us with statements of Merchandise, purchased and forwarded into Upper Canada for the Naval and Military Departments, in the years 1813, 1814, 1815 and 1816, together with the amount paid for the same.

We have the honor to be,

Sir,

Your most obedient.

Obedient Servant,

(Signed.) J. HALE.
J. BABY.

GABRIEL WOOD, Esq.

Commissary General.

Certified to be a true copy.

(Signed.) JOHN MACAULEY,

Secretary,

to ARBITRATOR for Upper Canada

A TRUE COPY.

J. BABY.

A, No. 21.

Commissary General's Office,
Quebec, 31 January, 1823.

GENTLEMEN,

With reference to your letter of yesterday, requesting information as to the extent of Merchandise purchased and forwarded to Upper Canada on account of the public service, in the years 1813 to 1816 both inclusive, I beg to acquaint you, that there is no means in my power to enable me to comply with your wishes in this respect. All the Account-

Books and Papers of my predecessor in office, Sir W. H. Robinson, who was in charge of the Commissariat duties in this country during the periods above mentioned, having been carried by him to England.

I have the honor to be,

Gentlemen,

Your most ob't. Serv't.

(Signed.) G. WOOD.

Commissary General

A true copy.

J. BABY.

A, No 22.

*Commissary of Account's Office,
Quebec, 7 February, 1823*

I have to acknowledge the receipt of your letter of the 4 Instant, requesting me to furnish you with statements of Merchandise purchased in this Province and forwarded to Upper Canada during the years 1813, 1814, 1815 and 1816.

Upon referring to the cash accounts of Commissary General Sir W. H. Robinson, from those periods, it appears that purchases were made to a very considerable extent, but as the account for transport does not specify the articles but merely the wages for the number of men employed on that service, or the hire of vessels, it is impossible to ascertain what part was either purchased for or forwarded to the Upper Province. I beg leave to add, that the Store and Provi-

sion accounts of Sir W. H. Robinson for the above mentioned years, were by the desire of the Lords Commissioners of His Majesty's Treasury, transmitted unexamined to England, and consequently there are no records of the same in this office wherefrom the information you require can be derived.

I have the honor to be,

Sir,

Your most obdt. Serv't

(Signed,) J. H. ADAMS.

Dy. Com. Gen.

Certified to be a true copy.

(Signed,) J. HALE.

A true copy.

J. DABA

A, No. 23.

Quebec, 10 February, 1823.

SIR,

From your favor of 7 Instant to the honorable John Hale Arbitrator for Lower Canada, it appears, that though the documents in your office do not specify the amount of purchases for the use

of Government in Upper Canada, made by the Commissary General from 1 October 1813 to 1 Jan'y. 1817, you are yet enabled by reference to the cash accounts of Com'y General, Sir W. H. Robinson, for those periods, to ascertain the sum total of disbursements by that officer for purchases of Merchandise or Stores of all descriptions in Lower Canada.

It also appears, that the account for transport, though it does not specify the articles, states the wages for the number of men employed on that service and the hire of vessels.

As, in the absence of other information of a more direct and satisfactory nature, such facts as those which it appears you can furnish may be useful, we have to request you will be pleased to favor us with extracts from the cash and transport accounts above referred to, stating the disbursements for purchases of Merchandise or Stores in Lower Canada within the period specified, together with the wages for the number of men, or the hire of Vessels employed in forwarding part of such purchases to Upper Canada.

I have the honor to be,

Your most ob't. humble

(Signed.) BY

ARBITRATOR for Upper

J. H. ADAMS, Esq.

D'y. Com'y. Genl

Certified to be a true copy.

(Signed.) JOHN MACAULEY,

Secretary.

A true copy.

J. BABY.

A, No. 24.

Military Secretary's Office,
Quebec, 11th Feb'y. 1823.

Sir,

In reply to your letter of yesterday I beg leave to inform you, that it is not in my power to furnish you with statements of the Merchandise purchased in this Province by the Commissariat Department, and forwarded to Upper Canada in the

years 1813, 1814, 1815 and 1816, or the amount paid for the same.

I have the honor to be,

Sir,

Your ob't. Serv't.

H. C. DARLING.

The Honorable J. Hale,

A true copy.

J. BABY.

A, No. 25.

Commissary of Account's Office,
Quebec, 17th February, 1823.

Sir,

Having submitted your letter of the 10th instant to his Lordship the Commander of the Forces, I beg leave to acquaint you, that His Lordship sees no objection to you or Mr Hales having reference to any account on Record in this Office; but he does not think it necessary to direct that statements of them should be furnished, as it would interfere with the Public duties of my department.

I have the honor to be,

Sir,

Your most ob't. Serv't.

(Signed.) J. H. ADAMS.

Dy. Commissary General

J. BABY, Esq.

Arbitrator for Upper Canada.

&c. &c. &c.

A TRUE COPY.

J. BABY

A, No. 26.

THE undersigned has already had the honor to acknowledge the receipt of the different papers transmitted to him by the Honorable the Arbitrators for Upper and Lower Canada, and has carefully considered the different claims contained therein, as well as the objections thereto with the correspondence on both sides, and has duly weighed the reasons offered for and against their admission.

The first, second, third and fourth claims preferred by the Honorable James Baby, Arbitrator on the part of Upper Canada, having been by him relinquished, require no further notice.

The undersigned on the fifth claim, concurs with the honorable John Hale, Arbitrator on the part of Lower Canada, in the fair proposal by him made, to allow the Province of Upper Canada one fifth of the duties collected in Lower Canada, under the 53d. Geo. 3 Cap. XI, a proportion sanctioned by the Commissioners of both Provinces in the year 1817, soon after the termination of the late war when its effects must have been strongly impressed on their minds, and since adopted by the Imperial Parliament, as appears by the act of 3 Geo 4 cap. CXIX. The amount of duties collected in Lower Canada under 53d Geo. 3d cap. XI, from 1st October 1813 to

5th January 1815, was £62,468 10 9

One fifth of which } £12,493 11 2
whereof is }

Of which }
Upper Canada } 5272 16 8
also has }
received. }

leaving a balance of seven thousand two hundred and twenty pounds seventeen shillings and six pence, currency, which the undersigned awards to be paid to the Province of Upper Canada in full satisfaction of the fifth claim.

The undersigned on the sixth claim, is obliged to say with the honorable the Arbitrator for the Province of Lower Canada, that he feels himself bound to consider the returns of the Inspector at Coteau du lac, as barring every claim they do not bear witness to, unless distinct and specific proof be produced that they are defective, the more especially as the Inspector was the joint Officer of the two Provinces and his returns have not been invalidated by any thing the Honorable the Arbitrator for the Province of Upper Canada, who has had an opportunity to examine them, has produced.

The returns of the Inspector from 1st January to 25 March 1815, amount to 2 1/2 per cent on

Sterling £52,497 3 0
and 1 per cent on 813 6 10

Sterling £53,010 11 10

or 53,934*l.* 3*s.* 1*d.* Currency: and as it is admitted, that the proportion due on that sum to Upper Canada has been paid, the undersigned deems this a settled claim.

The undersigned has given to the seventh and eight claims and to the documents and papers in their support, the most deliberate consideration, and finds it impossible to form with any degree of accuracy a Basis for calculation, as he only perceives a mass of assertion to maintain them and arguments founded thereon, without that strong and convincing proof of the facts alledged, which

alone should entitle to admission claims of such a magnitude. However, as the honorable the Arbitrator for Lower Canada has not denied, and as the undersigned is convinced in his own mind, that Goods subject to the ad valorem duties were purchased by the Commissariat Department and by other individuals, in the years 1813, 1814, 1815 and 1816, in Lower Canada, and afterwards transported to Upper Canada without having been previously entered at Coteau du lac; and as the honorable the Arbitrator for Upper Canada has stated in his correspondence, that in producing these claims, he was well aware that they did not rest on such particular proof as it was desirable to offer, and that he therefore never indulged in any expectation of recovering all which he considered due; the undersigned guided by the broad principles of equity, and actuated by a spirit of conciliation, is induced to award, & does award, a specific sum—namely, five thousand pounds Currency, to the Province of Upper Canada, in full and complete satisfaction of these last mentioned claims.

With respect to the ninth and last claim, the undersigned has before him what he cannot but consider as an express relinquishment of such a claim by the Commissioners for Upper Canada, in the agreement dated 31st May 1817, which, in his opinion, operates as a bar to any claim prior to the date at which such agreement terminated: nor can he admit it as a claim which Upper Canada could class among her demands for arrearages due previous to the year 1816. Because such a claim, if ever made previous to the year 1817, which does not appear, was certainly never before admitted, and was then freely and expressly relinquished on the part of Upper Canada. It besides appears to the undersigned to be of late creation, as no mention has been made of such a pretension, either to His Excellency Sir John Coape Sherbrooke in 1817, or to Sir Peregrine Maitland in 1821. Moreover, the tax on sales by Auction, was imposed for internal purposes, and never intended by the Legislature of Lower Canada, to be participated in by the Province of

Upper Canada, as manifestly appears by the instructions given to the Inspector at Coteau du Lac, to make returns only of the Goods passing his Post subject to the specific duties imposed by the act 45th Geo. 3 Cap. XIII. which were entered and collected by the Custom House at Quebec, and the Auction tax was levied on sales made by Auctioneers licenced by the Governor of Lower Canada, not collected by the Custom House at Quebec, but paid into the hands of the Receiver General of Lower Canada. It is therefore evident to the undersigned, that the whole operation of that act was not intended to extend to

Upper Canada, and he consequently considers the ninth claim as totally inadmissible, and such is his final award.

(Signed.) ROBERT MORROGH.

THIRD ARBITRATOR.

Under 3d Geo. 4 cap. 119

MONTREAL, 27th August, 1823.

A TRUE COPY.

J. BABY.

B.

Award of the Arbitrators appointed under an Act of the Imperial Parliament, 3d. Geo. 4. Chap. 119, "to hear and determine all claims of the Province of Upper Canada upon the Province of Lower Canada, on account of drawbacks or proportion of duties under agreements made and ratified by the authority of the Legislatures of the said two Provinces."

The two Arbitrators first appointed met at Montreal on the 29th. January 1823, namely :

The Honorable James Baby for Upper Canada, by commission, dated 10th. January, 1823, and the Honorable John Hale for Lower Canada, by Commission, dated 15 January 1823; and on the 22d. January 1823, the said Arbitrators by an Instrument under their hands and Seals, did appoint Robert Morrogh Esq. of Montreal in Lower Canada to be the third Arbitrator, pursuant to the said Act of the Imperial Parliament.

The Arbitrators then adjourned, and the two first appointed having had frequent meetings at Quebec, between the 21st July and 11th. August, finally joined the third Arbitrator at Montreal on the 21st August, 1823.

Sundry claims advanced on the part of the Province of Upper Canada were then taken into consideration, upon which it is determined and declared.

1st—That upon claim the fifth, for a proportion of duties levied in Lower Canada under the Act of the Provincial Legislature, 53d. Geo. 3d Chap. XI. "upon Merchandise between 1st October

" 1813 and 31st December, 1814, no account of which was taken at Coteau du Lac, till 25th April, 1814." The Award of the Arbitrators undersigned is, that the sum of seven thousand two hundred and twenty pounds seventeen shillings and six pence Canada currency, shall be paid to the Province of Upper Canada, in full and complete satisfaction of the said claim.

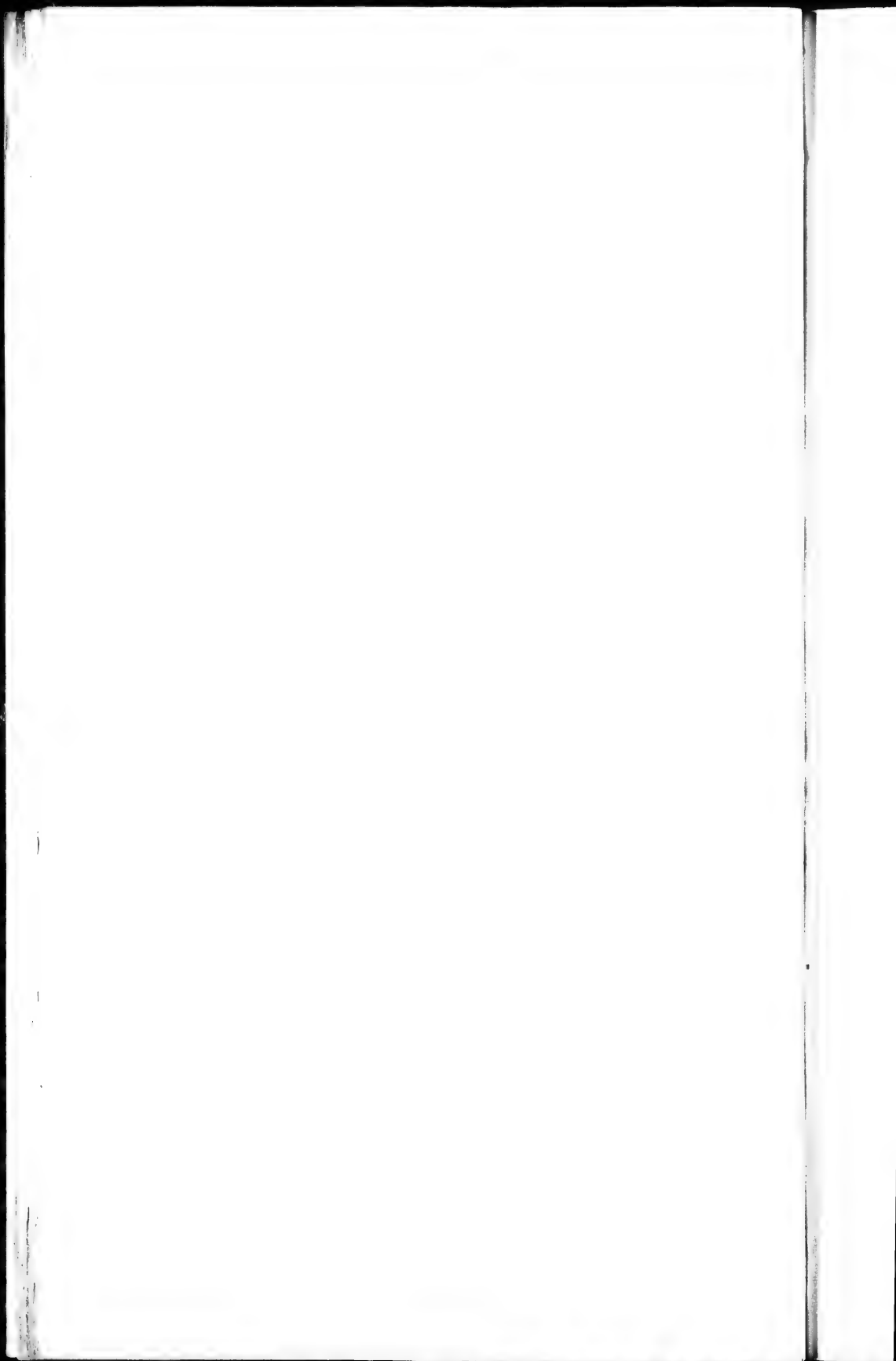
Montreal, 27th August, 1823.

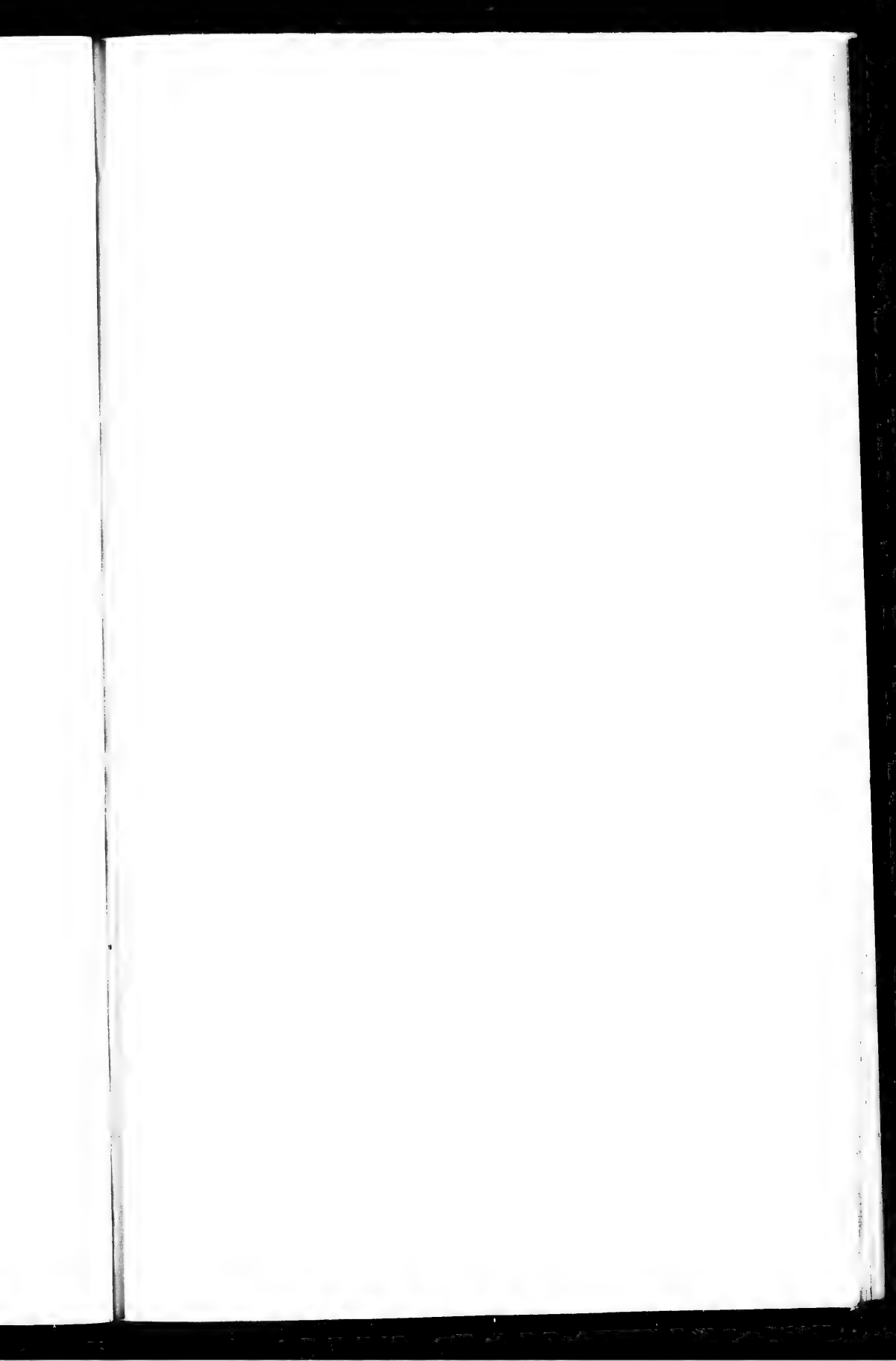
(Signed.) { ROBERT MORROGH,
J. HALE.

2d—That upon the seventh and eighth claims, viz. On claim the seventh, "For Drawbacks of duties on Merchandise purchased in Lower Canada by the Commissary General and other Public Officers, and sent to Upper Canada for the use of the Army, the Navy, the naval Yards, the Quarter Master Generals, Royal Engineers, and Barrack Departments &c. during the years 1813, 1814, 1815 and 1816, of which no account has been taken at Coteau du Lac," and on claim the eighth, "for duties on Merchandise passing Coteau du Lac, in the years 1813, 1814, and 1815, without reporting," the award of the Arbitrators undersigned is, that the sum of five thousand Pound Canada currency shall be paid to the Province of Upper Canada in full and complete satisfaction of the said claims.

MONTREAL, 27th. August, 1823.

(Signed.) { ROBERT MORROGH,
J. BABY.





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D, No. 1.

Determination of the Arbitrators for the Provinces of Lower and Upper Canada, appointed under the authority of the act of the 3d. Geo. 4th Cap. 113, respecting the Improvement of the Navigation of the River Saint Lawrence.

WE the undersigned Arbitrators, appointed under the provisions of an Act of the Imperial Parliament, 3d. Geo. 4th Cap. 113, in pursuance of the 30th Section of the said Act, have had under our consideration a letter from Andrew Wm. Cochrane Esquire, Secretary to His Excellency the Governor in Chief, and Mastering the Government of the Province of Lower Canada, dated the 22d July 1823, enclosing certain Reports relating to the Navigation of the River Saint Lawrence, together with an address from the House of Assembly of Upper Canada to His Excellency the Lieutenant Governor of that Province, praying that a Survey may be taken, with a view of ascertaining what improvement may be made in the Navigation of the waters of the River Saint Lawrence, and that the amount of certain duties heretofore levied in Lower Canada under an Act of the Legislature of that Province, 18th Geo. 3d, and remaining unexpended, may be appropriated to the purpose of defraying the expense of the said Survey.—Upon which subject we have agreed and determined to recommend;

1st—That as a preliminary measure, three Commissioners should be appointed in the usual manner, to enquire into the present state of the River, to suggest improvements in the Navigation thereof, and to procure Plans and Estimates of the Improvements they may recommend.

2nd—That the Improvement of the Navigation of the River Saint Lawrence being an object of common Interest to both Provinces, the sum remaining unexpended of the duties heretofore levied in Lower Canada under the Act before mentioned, should be appropriated generally to that purpose without reference to boundaries.

Signed at Montreal, in Lower Canada, this twenty fifth day of August, in the year of our Lord one thousand eight hundred and twenty three.

(Signed.) J. BABY. (L. S.)
ARBITRATOR for Upper Canada.

(Signed.) J. HALL. (L. S.)
ARBITRATOR for Lower Canada.

(Signed.) R. MORRISON. (L. S.)
Third Arbitrator.

A TRUE COPY.

J. BABY.

D, No. 2.

The improvement of the Navigation of the River Saint Lawrence having been brought under the consideration of the present Arbitrators by the respective Governments of Upper and Lower Canada, the undersigned Arbitrator for the former Province, begs leave to submit the following propositions.

1st—Three Commissioners appointed jointly by the Governors of the Provinces, shall be specially authorized to

Survey the River Saint Lawrence from the head of the rapid waters, near Johnstown, downwards as far as Montreal, and shall report to both Governments on the practicability of making improvements in the Navigation, preparing at the same time, with the aid of Professional men, and delivering with their reports, Plans, Maps, field Notes, and estimates respecting the works they may consider necessary. They shall first examine the bed of the River, and

ascertain what advantage the commerce of the provinces might derive from works confined to its Banks, or their immediate neighbourhood. They shall next explore the adjoining Country and determine on the expediency or benefit of a Canal similar in plan and dimensions to the work now in progress at La Chine, which commencing near Johnstown, should enter Lake Saint Francis, and continuing its course from Coteau du Lac, terminate near the Cascades. The expenses of this Survey shall be defrayed out of the moneys now in the hands of the Receiver General of Lower Canada, which have arisen from the Duties or Rates on Rafts, Saws, &c. passing Chatham, collected by virtue of the Act of the Provincial Parliament of Lower Canada, ch. 10, of 1809, and applied for the Improvement of the Inland Navigation of the River Saint Lawrence between Montreal and Lake Saint Charles.

24.—In the event of the Commissioners thus appointed and empowered reporting that it would be more advantageous to undertake the plan first alluded to, than to confine their operations to the borders of the River, some further aid would be required for carrying it into effect; and it is accordingly proposed to create a Stock of £100,000 or more if wanted, for the redemption of which at a stated period and the payment of the interest in the meanwhile, the joint debt of the two Provinces should be pledged.—There can be no doubt that a loan of the above amount might be obtained by the Provinces on easy terms, and that their combined resources are adequate to the regular payment of the interest and the extinguishment of the debt within a moderate space of time. The creation of a Fund of this description would render the construction of the proposed Canal less onerous, and would, it is conceived, afford greater facilities in the immediate execution of the work than an annual appropriation from the ordinary Revenue of Canada or from a special duty. With respect to the mode of discharging the interest on the loan a difference of opinion may exist in the Country. Some persons may be inclined to impose an addition of duty on Rafts and Boats navigating the River, and others may prefer a duty on Imports to be specifically

applicable to that purpose. The undersigned must avow a predilection for the latter mode, because an additional duty on some particular article of commerce might be devised that would bear equally on the Provinces, and produce the sum required easily, and without detriment to any class of people or to any individual or general interest.

It is on the other hand very questionable how far it would be consonant with good policy to impose any additional duty or tax on Rafts or on any branch of the Inland Trade of the River Saint Lawrence. The present Rates paid on Rafts of timber, &c. descending to Market might perhaps be continued on an improved system of collection, and under a moderate toll might be exacted, and would of course be necessary in the event of any improvement being effected on all boats passing upwards. But any scheme for raising in this way a sum of five or six thousand pounds besides keeping the works in repair, paying officers at the Locks, &c. must detain it self, as it would press too heavily on the Trade, and tend to divert a large portion of it from Quebec to New York. The imposition of duties on the Trade of the River cannot be attempted with too great caution, because a mere trifle might have the effect just mentioned. It is hoped that Lower Canada will enter heartily into a project, which must so materially contribute to her prosperity. The fund collected for improving the river eastward of the boundary line, where indeed the principal impediments exist, is in her treasury and at her sole disposal. Yet as it was chiefly paid by the Raftsmen of Upper Canada, it is trusted, that it may be regarded as a common property applicable to the improvement of the Saint Lawrence, without reference to local distinctions, and that Lower Canada will not object to such a general application of it.

Should it be said that an impost at Quebec, of which the whole produce would be appropriated to the improvement of Inland Navigation on the great channel of Commercial commerce, would bear unequally on the two Provinces and would consequently be unjust and inexpedient, it may be observed that admitting it did bear on the Lower Province with a greater pressure than on

Upper Canada the former Province would still be a gainer. Every improvement in the Navigation of the Saint Lawrence which tends to facilitate the transportation of the Produce of Upper Canada, and the neighbouring States to the Markets of Montreal and Quebec, produces immediate benefit to Lower Canada—a benefit not only immediate but permanent and continually increasing with the increasing number and wealth of its customers.

It is perhaps capable of demonstration, that Upper Canada is not so much interested as Lower Canada in improving the water communication by the River Saint Lawrence, for the Markets of New York are open to her trade, and would receive it with eagerness. Already have the Merchants of the State of New York, purchased wheat in the Districts of Gore and Niagara, and conveyed it to Rochester to be there manufactured and forwarded by the Erie Canal. Flour can also be sent from any part of Lake Ontario to Salina by way of Rochester, at the rate of about two shillings and six pence per barrel; and as soon as the Erie Canal is completed, the expense of sending a Barrel of Flour from the Shores of Lake Ontario to New York will not differ materially from the Charges incurred for transport from that Lake to Quebec. Should the improvement of the Saint Lawrence therefore be neglected, or delayed in consequence of any ill-timed or unworthy jealousy between the Provinces respecting the proportion which each should bear of the expense, Upper Canada might, at least, send her Flour to New-York; and, if she should there sell it at a price equal to that offered at Quebec, she could not be said to suffer, while the diversion of her trade to another Channel would sensibly depress the commerce of the Lower Province and its effects would be felt by all classes of its people. This result is however greatly to be deprecated, if not in a commercial point of view, at least, from national considerations. Upper Canada could on this question have no difficulty in recognizing the truth of the maxim adduced by the Commissioners of Lower Canada in reporting to their Legislature at an early period, the terms of a Provisional agree-

ment between the Provinces, that "rigid accuracy between Provinces of the same Empire is not necessary; nor is it attainable." She would be therefore ready to bear her share of the expense of improving the Saint Lawrence to the extent of her resources; and should Lower Canada be averse to a duty on imports such as it has been attempted to shew was advisable, she would willingly accede to any other feasible and equitable scheme for effecting an object so essential to the rapid growth of both Provinces in commerce, wealth, power, and prosperity.

In the report of the commissioners of Internal communications, made to the House of Assembly of Lower Canada in the year 1813, the importance of improving the Navigation of the Rivers of the Province generally, is very accurately set forth. "It will," say they, "accelerate the settling of the country, facilitate its agriculture, and commerce on each and every part of the Province an equitable participation in the benefit of internal improvement. This species of communication will be to commerce chiefly be of incalculable benefit," and will lead "to the Ports of this Province the trade of a portion of the territories near this Province." They next advert to the efforts which are making by the American Government to divert the course of the trade by means of the internal navigation of the River Saint Lawrence—with this view that Government contemplate making the "Great Canal and Locks" between "Lake Erie and the Navigable waters of the River Hudson, and also between Lake Champlain and the aforementioned Navigable waters." "If the Province of Lower Canada should on the other hand take measures for improving the internal Navigation of its rivers from the Saint Lawrence as far as the lines, it will in a great part prevent the effects of the measures of that Government, and Lower Canada by ameliorating that navigation will open various sources of exportation by the River Saint Lawrence and furnish employment to British Shipping."

The Canals here spoken of are now

rapidly approaching their completion, and the effects anticipated by the committee must follow, unless the measures of the State of New York should be counteracted in this Country. With the great natural advantages presented by the River Saint Lawrence, nothing more is wanted than a zealous and cordial co-operation between the Sister Provinces of Canada, to accomplish what is so much to be desired, and to retain, for ever, the great and increasing trade of which the Gulph of Saint Lawrence is the proper Outlet. This co-operation is not to be despaired of, provided a return can be made to that harmony and friendly understanding which formerly existed between the Provinces, and which has been too long interrupted by an unhappy combination of circumstances. Were the two Legislatures once impressed with a sense of the identity of interests, which does actually exist between the Provinces in this matter, such a conviction would induce them to act in concert on this occasion, and the consequence would be, that in a few years, the obstacles which nature has opposed to the easy navigation of the Saint Lawrence, would be cleared away by the United resources of Canada, and the trade of both sides of that River, as well as of the great Lakes, would, notwithstanding the efforts of American enterprise, be permanently concentrated

in the market of Lower Canada.

QUEBEC, 13th August, 1823.

(Signed.)

J. BABY.

ARBITRATOR for Upper Canada

NOTE.

SHOULD any general scheme of improvement be adopted, (and unless it be general it cannot be very useful) it appears advisable, that the Locks at the Cascades and the Coteau du Lac should be placed under the joint control of the Provinces. It is conceived that the sums disbursed from the Military Chest in their construction, have been long ago refunded by the high tolls which have been exacted on Boats passing upwards.

It is also submitted, whether the third section of the Act 3d Geo. 4 Cap. 119, does not annul the Provincial Act of 48th Geo. 3d Cap. 19, so far as it respects Rafts descending the River from Upper Canada.

(Signed.)

J. B.

A TRUE COPY.

J. BABY.

D, No 3.

THE undersigned Arbitrator for Lower Canada has had the honor to receive from the Arbitrator for the Upper Province, a paper dated the 13th inst. on the subject of the navigation of the River Saint Lawrence, and he concurs with the Arbitrator for Upper Canada in the proposition that Commissioners should be appointed without loss of time to inquire into the state of the navigation, to suggest improvements, and to procure plans and estimates accordingly.

The commissioners may in the first instance be appointed in the usual manner; each of the two Governments appointing one and these two choosing a third; but it may be well to provide for the occasional removal of these commissioners, and with this view, it is recommended, that the Commissions of the two first should be held during pleasure, and that the nomination and appointment of the third should be revocable by the first two Commissioners with the concurrence of the Governor of either Province.

The undersigned concurs also in opinion, that the expense to be incurred in improving the navigation of the Saint Lawrence, ought to be defrayed in equal proportions by the two Provinces, and, upon this principle, he recommends that the sum remaining unexpended of the fund heretofore raised in Low-

er Canada for the partial improvement of the navigation of the River, should be applied generally to that purpose. The undersigned declines giving any opinion upon the question how far the 30th Section of the act of Parliament, 3d Geo. 4 cap. 119, may affect any tolls hitherto exacted in Lower Canada.

It is doubted whether the Arbitrators are required to suggest the means of carrying on any Public works; but, if it is to be so understood, the undersigned would recommend the negotiation of a loan rather than any appropriation of the ordinary Revenues of the Provinces. But he could not agree to lay a tax upon Imports for the purpose of paying the Interest, because he thinks that the particular branch of commerce, which derives benefit from the improved navigation, ought to support that charge, and if it cannot bear any considerable addition to the tolls existing, the works to be undertaken must be contracted accordingly.

Quebec, 14th August, 1823

(Signed.) J. HALE,

ARBITRATOR for Lower-Canada.

A TRUE COPY.

J. BABY

D, No. 4.

GOVERNMENT HOUSE,
York, April, 30th, 1823.

SIR,

By command of the Lieutenant Governor, I have the honor to transmit to you copies of an Address presented to His Excellency by the House of Assembly during the last Session of the Legislature, and of His Excellency's reply thereto; and I am instructed to request

you will be pleased to take the necessary measures therein.

I have the honor to be,
Sir,
Your most obedient,
Humble Servant,

(Signed.) G. HILLIER.

A TRUE COPY.

J. BABY.

D, No. 5.

*To His Excellency Sir Peregrine Maitland
Knight Commander of the most Honorable
Military Order of the Bath, Lieutenant
Governor of the Province of Upper
Canada, and Major General commanding
His Majesty's Forces therein, &c. &c. &c.*

May it please your Excellency,

We His Majesty's dutiful and loyal subjects the Commons of Upper Canada in Provincial Parliament assembled, most humbly beg leave to represent to your Excellency, that we have resolved that by the thirtieth clause of an Act of the Imperial Parliament passed in the third year of His Majesty's Reign, entitled "an Act to regulate the trade of the Provinces of Lower and Upper Canada and for other pur-

"poses relating to the said Provinces," it is enacted, that the expense of improving the navigation of the River Saint Lawrence shall in future be defrayed by such measures and in such proportions as the Arbitrators to be appointed under the provisions of the said Act, shall determine upon the prayer of either Province, provided always, that no such determination shall be carried into effect until sanctioned and enacted by the Legislatures of both Provinces, also, that by an Act of the Parliament of Lower Canada passed in the 18th year of His late Majesty's Reign, certain rates or duties payable at Chateauguy and Montreal, were imposed on all Scows, Rafts and Cribbs passing the rapids between Chateauguy and Montreal and were appropriated as a permanent fund for the improvement of the navigation of the

River Saint Lawrence, also that by the published statements of the public accounts of Lower Canada, the amount of duties levied under the said Act and unexpended on the first of November 1821, was five thousand two hundred and three pounds, six shillings and seven pence, of which it is ascertained a great proportion was levied on the trade of Upper Canada and that it is highly desirable the said sum should be expended,

We therefore humbly beg your Excellency to direct the attention of the Arbitrators on the part of this Province to this subject, and to recommend that from the said fund provision be made for an accurate Survey of the course of the Saint Lawrence by an Engineer properly qualified to report on the improvements that may be made therein, that the subject may be referred to the consideration of the Legislatures of both Provinces at their next Session, in conformity to the provisions contained in

the said act of the Imperial Parliament.

Common's House of Assembly, }
13th March, 1823. }

(Signed) LEVIUS P. SHERWOOD,
Speaker.

To which His Excellency was pleased to make the following reply

Gentlemen of the House of Assembly, I shall not fail to cause instructions to be given to the Arbitrator on the part of this Province on the subject of your address relative to the Survey of the River Saint Lawrence.

Certified,

(Signed.) G. HILLIER,

A TRUE COPY.

J. BABY

D, No 6.

QUEBEC, 23d July, 1823.

MY DEAR SIR,

THE enclosed papers came to my hands last night, and I send them to you for your perusal according to orders, I

shall hope to see you in the course of the morning.

Your very devoted,

Humble Servant,

(Signed.) J. HALE.

Honorable JAMES BABY.

A TRUE COPY.

J. BABY.

D, No 7.

REPORT.

To Thomas A. Turner and Robert Armour Esquires, Commissioners for Inland Navigation for the River Saint Lawrence in the District of Montreal.

GENTLEMEN,

Pursuant to your instructions to me, bearing date the twenty-ninth day of October, 1822, I have surveyed & examined the Raft and Boat Channel where the waters of the River Saint Lawrence near Nuns' Island take their course round said Island, and intersect the River Chateauguay, at Dalton's Point, and from thence down the River to where they form a junction with the main body of the River Saint Lawrence: I have likewise ascertained and laid down on the plan accompanying this Report, the material obstructions to the Raft and Boat navigations as marked thereon.

The only safe course for Rafts and Boats descending the River Saint Lawrence in time of low water, is represented by a dotted line commencing opposite the point of Isle Peron at K, and terminating below the outlet of the River Chateauguay at L, and passing the Southern and Eastern sides of Nuns' Island, at Dalton's Point, there is a safe and commodious Harbour in which all Boats and Rafts may remain in safety during storms and adverse winds until more favorable weather admits them to pass down the Saint Louis' rapids to Montreal, which can be effected only in calm weather or during a favorable wind. So difficult is this part of the navigation, that Boats and Rafts are frequently detained in the Harbour of Chateauguay for six or eight days waiting for favorable weather.

The first obstruction in this course is pointed out on the Map at E, being a sand

bar of about sixty-six yards in breadth across the Channel when the River is at its lowest; there are only from eighteen to twenty inches of water on this part; at X, is a large rock in the Channel which only appears above water when the River is at its lowest. Boats passing this place after dark are in great danger of being dashed in pieces on this rock, and rafts are apt to be wrecked on the sand. In order to render this passage safe for the purposes of navigation, it would be necessary to remove the rock, and also, a sufficient portion of the sand bar, so as to make the Channel at this place, at least, four feet in depth, and sixty-six yards in width. The sand removed from this bar should be carried some distance and lodged in deep water, so that the agitation of the waters may not cause its return to the same place.

The second impediment is a bar of rocks at A, extending almost across the river and leaving only a narrow passage on the side, marked A; this passage is extremely difficult to navigate either with boats or rafts during the time of low water.

The third, fourth, and fifth impediments are B, C & D, consisting of bars of rocks, which render the navigation of the Channel during low water, extremely difficult for boats and rafts, but particularly dangerous for Steam-boats which proceed with more velocity than Crafts propelled by oars.

At E, to render the Channel navigable with safety, it would require four thousand cubic yards of sand to be removed to the distance of half a mile.

The rock at X, must likewise be removed, together with the bars of rocks at A, B, C and D. This would leave a Channel sufficient in width and depth to answer the purposes of navigation; that is, the sand removed at E, would leave a Channel to the width of sixty-six yards,

and the rocks removed at A, B, C, and D, would there leave a clear Channel about thirty yards in breadth and four feet in depth, at low water; the most probable expenses for removing these obstructions I could estimate as follows:

For removing the sand and rocks at E, - - -	1000/.
For removing the bars of rocks at A, B, C and D, - - -	2000/.
Making the sum of - - -	1000/.

This work could be only accomplished during the months of August and September, and for some years past part of October might be included.

Although it does not come immediately within the limits of my instructions, I cannot for near closing your attention to the great necessity there is for the erection of a light-house at Q, a high point of land on the western extremity of St. John's Island. This height is in the form of an oval, and at Q (see the map) is the body of a stone wind-mill which might at a very small expense be converted into a light-house; and for a small additional sum, it might be kept up in the same by the farmer residing in the buildings on St. John's Island, marked P.

The boats and rafts descending the River Saint Lawrence leave Quebec du Lac in the morning and pass over the Cascade Rapids, between the hours of twelve and two o'clock in the afternoon, after which every exertion is made to reach Chateauguay Harbour before night, because remaining on the Lake would be attended with danger. The darkness of night, however, generally overtakes them before they are able to reach the said Bar, at E, and very frequently night comes upon them at K, for a which they have a crooked and dangerous course to proceed through. Far difficult attending the Navigation of this part of the River, would be considerably removed by the erection of a Light House above mentioned, which would serve to guide them in the right course; whereas for want of some such guide, Boats and Rafts are frequently drove upon sand shoals, where they are in danger of be-

ing wrecked or are detained any day by adverse winds before they can reach Chateauguay Harbour. This knowledge I have from actual experience. I have frequently known boats drove upon the same shoals to the imminent danger of the passengers and Crew who suffered much in their perilous situation during a dark and tempestuous night; hence the necessity of removing these obstructions to the navigation of the river, and also for the erection of a Light House, which would enable Rafts and Boats to reach the Harbour in safety, although overtaken by the darkness of the night.

Secondly, Rafts and Boats descending the River Saint Lawrence and St. John's Lake, generally leave the Harbour of Chateauguay in the morning by day break, and during a calm they arrive at the head of the Rapids about three hours after, when they touch the Rapids they descend them with great velocity. Their course is pointed out (copied No. 2) by a dotted line, and commencing this report. As they descend they just touch the rocky cascade at the point C, thus drawing dead or water works, and rocks at its lowest do not meet with any obstruction, and they come near to the three rocks marked on the plan (thus D) in time of the lowest water they commence touching the bottom, or bed of the River, which is composed of a smooth ledge of rocks, at the places thus marked. The uncommon rapidity of the water however will force them over so fast, that it draws so much more water than the depth of the Channel, unless they come in contact with one of the Rocks, when it is retarded; In this case the Raft changes its course instantly, and generally grounds on one side of the channel, the rapidity of the current being so great as to put it out of the power of the men to govern the Raft—a Raft once aground in this place, is so difficult to remove that it frequently costs the proprietor the value of one half the Raft, sometimes the value of the whole to carry it to Montreal, in the time of lowest water, when continues about three Months, every season, there is a space in this Channel, commencing a little above the three Rocks, and extending below them a distance of about two hundred yards, where the water in

the Channel is only eighteen to twenty four inches in depth. The bed of the River at this place is composed of a stratum of dead Lime Stone, and on each side of the channel is a continued bed of Rocky shoals. All Rafts drawing from thirty to thirty six inches of water, which is the common depth of Rafts, are compelled to run the lost Channel at the north end of the great Cascade marked on the Plan. This is a most dangerous and frequently destructive course.

There is a sufficient depth of water to be found in this channel at all seasons, but the uncommon size of the breakers renders it impossible for rafts to descend with safety, unless they are made very strong, and even these are frequently dashed to pieces by the swells, and dispersed in different directions down the River, occasioning great expense, sometimes almost total loss to the owners of the said Rafts.

It is impossible for Boats to descend the lost Channel: they are obliged to make Lachine, where they discharge one half of their Cargo, and afterwards run the rapids with the remainder, and in many instances come in contact with one of the three Rocks mentioned above, when boat and Cargo are either lost or materially damaged.

The remains of a weir constructed by the Government funds about fourteen years ago, are represented on the Map in the space shaded with black extending from E to F. This was raised in order that Rafts and Boats might pass over the Shoals in safety. From the appearance, the above work extended seven hundred and fifty feet in length, twelve feet in width, and four in height, and was constructed of small white pine timber squared: the space between the sides was filled with small stones. This work proved of but little service to aid the navigation, and lasted but for a short time. The timber being neither of the proper size or quality to endure for any length of time; and for the time of its duration, although it caused a greater quantity of water to flow into the raft Channel, for want of a second weir to oppose the force of the water thus forced into

said Channel, it was allowed to disperse equally over the whole surface of the River to the South Shore—"water all

ways finding its own level." In order to remove entirely the difficulty attending this particular part of the navigation, I would recommend the construction of two weirs, as represented on the plan by the two spaces shaded black, A, D, & C, B, forming a tunnel of one thousand and fifty six feet in length, the lower end being two hundred feet in breadth, and the upper end four hundred. This, if rightly constructed, would, in time of low water, force through to the Tunnel a double quantity of water, which would admit a raft drawing forty inches, and probably more, to pass even during the period of low water.

Each Weir should be one thousand and fifty-six feet in length, twelve feet in width, and five feet high. The sides ought to be constructed of sound white oak, over twelve inches square, locked together by cross pieces of the same, and framed together in every fifteen feet. The Upper end should form a round point fastened together with bars and trunnels of Iron, so as to make the ends of the Weir able to resist the pieces of broken ice that descend the rapids in the Spring of the year.

The weirs constructed as above directed, should be filled in a solid manner with stones, which must be carried in Boats from the shore. This may be safely done from near the Mill marked on the plan. Boats carrying stone for this purpose should steer out under the reef of rocks until they reach the channel, from thence descend to the shoal, at or near the three rocks, so often adverted to, when they can with safety fall into the Eddy of the Weir and discharge their cargo. But here I would beg leave to recommend the removal of the three rocks previous to the construction of the Weirs, because afterwards the waters would be too deep and strong to effect the accomplishment of the work.

To construct the two Weirs it would be necessary to raise them five feet in height, to prevent the water from running over them, and twelve feet in width, that they may be of sufficient density

to resist the force of any raft or ice that may come in contact with them. The Weirs constructed after this manner would form a Tunnel sufficient to admit the passage of Rafts and Boats drawing under forty inches of water with perfect safety.

To form and complete a Tunnel at this place, of the above description, would require fifteen thousand feet of white oak of a proper size & length. This should be deposited at Chateaugay and from thence carried down the river, and grounded upon the shoals near where the Tunnel is to be constructed in such quantity as may be required; the probable expense of the oak timber delivered on the shoals would depend much on the Montreal prices, say fifteen pence per foot making - - £ 937 2s. 6d.

To fill up the weirs require 5000 cubic yards of stone, the probable expense would be	}	2,112 0 0
Framing the timber and placing same -		
Iron work estimated at	}	150 0 0

Amounting to £ 3,419 2 6.

which being a considerable sum, should this work be constructed of different materials, say of Pine or any other cheap timber, the expenses might be considerably diminished. In this case, however, the work would be but of short duration, and consequently but of little importance to the navigation of this place; whereas were it composed of proper wood and other lasting materials under the direction of a competent Engineer, it would serve not only as a monument of the Spirit of enterprise, but would also be found of the greatest public utility.

Montreal, 14 January, 1823.

(Signed.) J. DAVIS, E. L.

Surveyor and Civil Engineer.

(Certified.)

A. W. COCHRAN.

Secretary.

A TRUE COPY.

J. BABY.

D, No. 8.

PRESCOTT, 10th August, 1823.

SIR,

Since I had the honor of receiving your letter of the 13th March, I have not failed to hold in recollection the desire of His Excellency the Lieutenant Governor therein contained, that I should collect and transmit

to you such further particulars as I could collect relative to the obstructions in the navigation of the Saint Lawrence and the best means of removing them, consulting therein the parties joined with me in petitioning His Excellency on that subject. It has not, however, been in my power to address you on the subject at an earlier period.

The statement which I now have the

honor to enclose herewith, has been framed from such of the opinions of such of the Petitioners as I have had access to, together with my own. I regret that it is not more minute and explanatory, and it was my intention at first, to have furnished his Excellency with drawings of the different places referred to, and estimates of the proposed improvements, but I since perceive, that such a report could not be prepared without incurring an expense in professional aid which your communication to me does not justify.

You will perceive that I have abstained from entering into any description of the difficulties occurring within the Upper Canada Boundary, as not regularly connected with the subject referring to the letter of the Act by which the Chateauguay fund has been raised, which confines the expenditure of the money to that part of the river between Lake Saint Francis and Montreal. I would beg leave, however, on this occasion, to point out to you, and in event of the fund being extended in its application to Upper Canada, that no correct report can be made on the best mode of removing the obstructions of the navigation above Saint Francis until the persons who have illegally possessed themselves of certain parts of the River for the erection of works to suit their individual interests, are removed or ejected. I refer more especially to the works at Mille

Roche and Mouliette rapids, where nearly one half of the Stream is monopolized by two individuals.

There are several other instances above these; this is a growing and alarming evil to the general interests of the Country, and is so general, and combines such local interest, that the usual application to the Grand Juries has been found ineffectual in stopping it. The privilege of erecting works in the River below the low water mark, belonging exclusively to the Crown, I should humbly suppose that it would be competent for the Executive itself to dispossess illegal intruders; and were it generally understood, that no work of any description could be erected in the River, but by special Petition to the Crown, an opportunity would be afforded of exacting an equivalent from the individual in erection of locks or some work useful to the community.

I have the honor to be,

&c. &c. &c.

(Signed) ARTHUR GIFFORD.

MAJOR HILLIER.

&c. &c. &c.

A TRUE COPY.

J. BABY.

D, No. 9.

THE most formidable obstruction to the navigation of the River Saint Lawrence, under present circumstances, is that presented by the Lachine rapids, or rather a continuation of rapids and shoals from that place to the port of Montreal, being such as to cause at some seasons the most imminent danger in the descent, and at all seasons, to render transportation upwards by water impossible, light boats being taken up only with great difficulty.

It is not however necessary to go into any minute description of these difficulties as the progressive state of advancement of the Lachine Canal justified a hope that effectual and permanent relief will be afforded from that most important work, almost as soon as any great improvement could be effected in the main Channel of the River.

Proceeding upwards after leaving Lachine, the first obstruction arises from neglected state of the approach to a small lock at the split rock, both above and below it, where for the want of depth of water, or rather from the occasional intervention of large but loose rocks, it becomes necessary rather to lift than float the boats into the lock, many hours are necessarily spent in this difficult operation, and not unfrequently boats grounding on one of those rocks, swing from the strength of the current after passing the lock, and are precipitated over the immense rock and gush of water, which this lock is meant to save them from; besides the double trouble of again passing the lock; an obvious and simple remedy offers itself for this, being the removal of these intervening rocks, or excavating, if necessary, at the entrance to and egress from the lock, and a further extension into the River of the pier or dam which collects the water for the supply of the lock.

The next obstacle in the progress up-

wards, and that next in magnitude to the Lachine rapids, is what is generally called the Cedars; this, like the space between Montreal and Lachine, is a carrying place of seven miles in extent, where property in its transit to the upper country is exposed to the injury (which experience has proved to be very considerable) attendant on landing, reloading, carting in bad weather and bad roads, &c. besides the additional expense while the copious and inexhaustible stream of the Saint Lawrence is running parallel to the road and capable with little expense of being improved so as to render unnecessary any recourse to land carriage whatever. This chain of obstructions commences at a point projecting into the River and into the rapids where a Seigneurial Mill is situated commonly called the Mill Point, immediately at the end of which there is a considerable descent in the bed of the current and proportionable rapidity.— There are likewise many Rocks in the fair way and on each side of the point, in so much that a loaded boat cannot possibly pass—there are two Bays, one above and one below this point, when, with a deep hollow in the intervening ground, appear naturally formed for a junction by water. It is therefore suggested that a cut should be made here. The construction of regular locks being expensive, it is humbly conceived that a communication might be made upon the principle of a running Canal with devised stops, a mode which several Engineers approve of; some persons compute the expense of this cut at not more than £500; whereas large sums might from time to time, be expended on the extremity of the point without being of much practical or lasting benefit to the navigation.

After passing a small Bay above this point, we come again to swift water, and opposite to Hog Island, which lies nearly in the fair way of the River, and be-

fore taking leave of it, it will be proper to advert to the obstructions in descending the River with Rafts, the main channel for which, as well as boats downwards, is on the south-side of the Island, the depth of water being greater than in the other, but the Island unhappily dissects the river in so peculiar a way, that the greatest exertions, and the ablest Pilots, cannot sometimes save the rafts from grounding on it. The dangers of Rag Island are proverbial among persons engaged in the Lumber Trade throughout the Country. To obviate this obstruction to the descent of Rafts, it is proposed to construct a Weir from the upper end of the Island obliquely towards the North shore including an Angle of about 30 degrees with the direction of the current, so as to give a decidedly superior impetus and inclination of stream to the Raft Channel, yet leaving sufficient flow near to the North shore as not to interfere with the Channel of the Boats upwards. This appears to be very practicable and would be better understood with the assistance of a drawing. The materials most proper to construct the Weir of, may be best judged of by professional men.

As before observed, after passing the small Bay above the Mill Point we come again to swift water, which extends from thence to the small point near which is situated the Village of the Cedars; along the whole of this distance, the River runs with vast rapidity and upon almost a perfect level plane, but much of the latter circumstance favors the passage of Boats; the numerous loose Rocks, ruggedness of the banks and shores with the strength of current, render it a very difficult operation even to bring up light Boats. A Canal along the whole of this is practicable and much to be desired, but keeping in view the amount of the fund in contemplation to apply, it is considered that the present Boat Channel upwards should be deepened as close to the water-edge as possible by removing the Rocks with which it is now crowded, the whole of the bottom being composed of loose stones and gravel by which means it is conjectured, that a clear fair way of two and a half or three

feet might with ease be obtained in depth which would be quite sufficient for an upward passage. In addition to this a good smooth Tow-path should be made. These objects being attended to with the proposed cut at the Mill Point, and perhaps a partial clearing of the Channel in a few intermediate places, there does not appear to be an hindrance to a loaded Boat going up with the assistance of horses as at present used for empty Boats, thereby avoiding the present resort to land carriage, which upon a moderate calculation, costs Upper Canada at the Cedars of per hundred weight on 3-11ths of the whole of her importations besides the exposure to damage.

Near to the Village of the Cedars there is a turn or point of the land, where a weir might be constructed, stretching obliquely a short way into the stream, by means of which a greater portion of water might be conducted along the shore.

The next obstruction, although one of comparatively small magnitude, is that at "Point au Blavier," where the current is very strong and the descent considerable. There being generally a good supply of water here, it is only proposed to construct a small projecting Pier at the head of the Current, with a Capstan on the extremity, by which Boats might easily be harned up and much time saved.

The last place for observation in the Lower Province is the Coteau du Lac, both above and below which, there are many Rocks and shallows which greatly impede the progress of Boats, but none which may not be removed with labor comparatively trifling to the object to be gained, as respects the immediate entrance to the Locks and egress therefrom; the same observations will apply as have already been made on the split rock Lock, both of which, as well as the head of the Cascade Lock, appear to require a special survey with a view to their being rendered efficient. The utility of their existence at all in the present state may be questioned. In that at the Coteau there is a manifest error in the con-

struction of the dam as respects the angle it forms with the direction of the stream, which makes the collection of waters at the head of the Lock inconsiderable and shallow, while remarking on these Locks it is difficult to avoid referring to (and it may be proper to hold in memory in event of future improvements,) the contracted plan on which apparently without any object they are built, admitting with difficulty, Boats of 12 feet 8 1/4 inches in breadth, thereby subjecting the whole water carrying of Upper and Lower Canada to a vessel of particular dimensions: whereas Boats of a greater Beam are more convenient, safe and profitable. The foregoing are the principal places in the Lower Province, which appear to merit an application of a portion of the fund accumulated at Chateaugay.

Referring to the Law of the Lower Province which establishes this Tax, it will be unnecessary to go into any description of the obstructions which occur in that part of the River lying in Upper Canada:

(Certified.)

(Signed.) A.W. COCHRAN

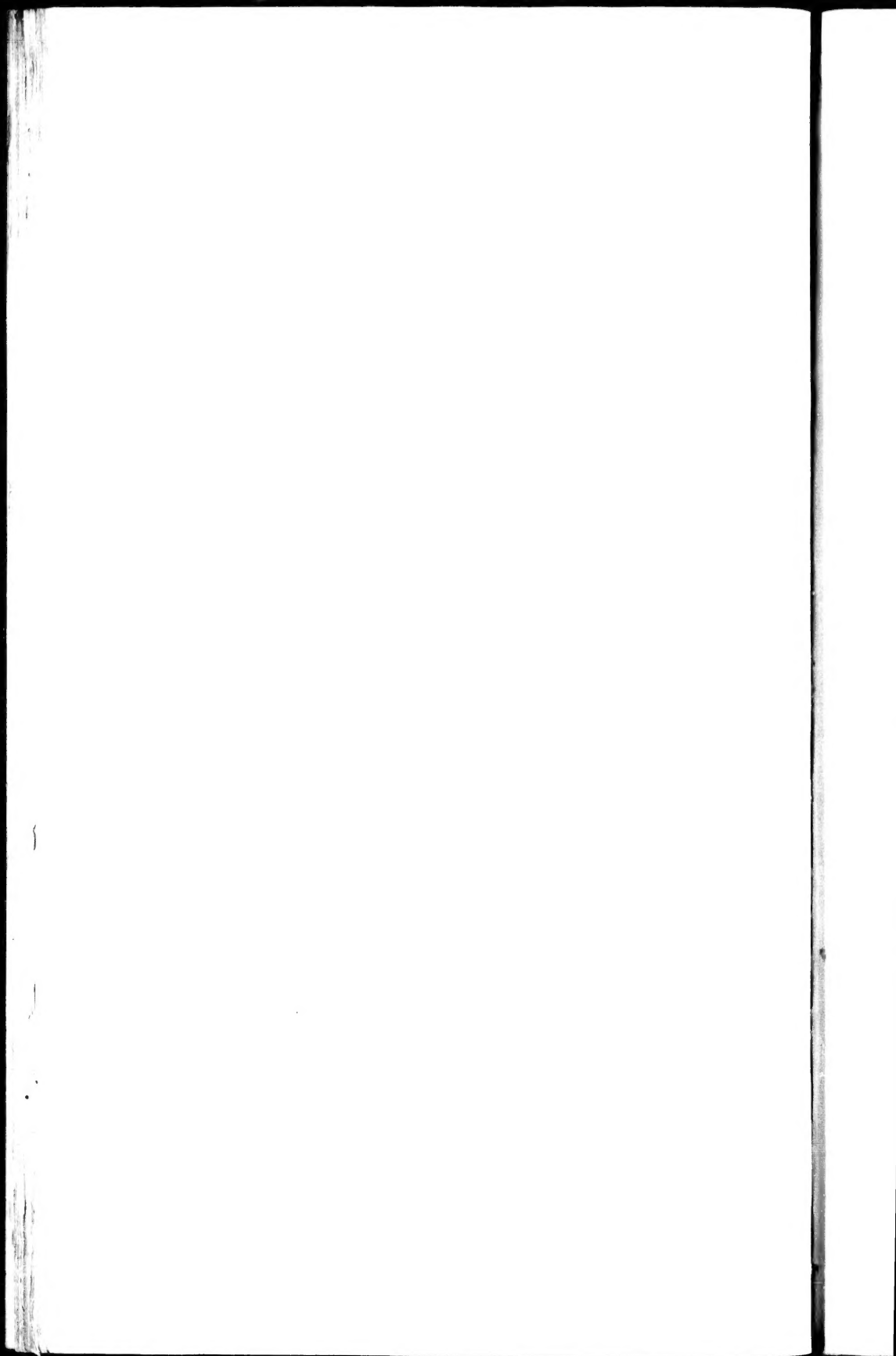
Secretary.

(Certified.)

(Signed.) G. MILLER.

A TRUE COPY,

J. BABY



E, No. 1.

MONTREAL, 28 August, 1823.

SIR,

THE difficulty we have experienced in procuring sufficient information relating to the actual importation into Upper Canada, of the Merchandise previously entered at the Port of Quebec, induces me to suggest to you the propriety of representing to the Government of our respective provinces, that future Arbitrators will find themselves as much in the dark as we have been, unless some measures be taken to ascertain the actual and relative state of the Import trade of both Provinces. It has been urged on the part of Upper Canada, that the regulations heretofore existing which required entries to be made at Coteau du Lac, were continually evaded: And moreover, that there were so many other Routes into Upper Canada, that the entries at Coteau du Lac could not, under any circumstances, afford a correct calculation of the duties which the Upper Province might justly claim. There is no reason to doubt the statement of those facts, and the arguments to be founded upon them are sufficiently evident. I would therefore propose, that, instead of a Port of entry into Upper Canada, an Office of entry on exportation from Lower Canada should be established at Montreal, and that every article intended to be

sent to Upper Canada, should be minutely entered at that office under a heavy penalty: Every thing must pass through Montreal: and Preventive Officers stationed at the head of the La Chine Canal, in Summer, and on two or three of the winter Roads, to examine the tickets of clearance to be issued from the Office at Montreal, would probably be sufficient to ensure regular reports being made for the guidance of future Arbitrators.

Something of the kind is absolutely necessary; for, as matters now stand, each Province is very likely to over-estimate its own claims: The Arbitrators have little but conjecture and computation to discuss; and the result of every point in Arbitration will inevitably be mutual dissatisfaction.

I have the honor to be,

SIR,

Your most obedient,

Humble Servant,

(Signed)- J. HALE

The Honorable JAMES BABY.

A TRUE COPY.

J. BABY

E, No. 2.

MONTREAL, 28 August, 1823.

SIR,

I have had the honor to receive your Note of this morning, suggesting the expediency of ascertaining for the guidance of future Arbitrators, the actual & relative state of the Import trade of both Provinces by means of an Office of entry or exportation from Lower Canada, es-

tablished at Montreal.

This being a matter of importance and requiring much consideration, I do not feel myself prepared to express a decided opinion on its merits, and shall therefore lay your communication before the government of Upper Canada.

In the mean while, I beg leave to offer some observations on the subject.

In the event of an Office of Exportation such as you propose being created,

Montreal would certainly be a more proper situation for it than Coteau du Lac, especially since the rapid extension of settlements along the Southern banks of the Ottawa River will soon add considerably to the trade of Upper Canada, and increase its demand for articles of Merchandise.

The difficulty of forming a just estimate of the trade of Upper Canada by means of Imports, has been proved to be very great, by the experience of twenty years under the system of drawbacks adopted in 1797, and the acknowledged failure and abandonment of that system, may justly excite doubts respecting the result of any project of a similar nature.

It is therefore my present impression, that though an establishment such as that now proposed, might in a certain degree, facilitate the proceedings of future Arbitrators, when they are called on to fix a new proportion of Revenue for Upper Canada, the relative population of the Provinces would probably furnish a less expensive and more satisfactory rule of decision. If in adopting it, some duties might be found to be paid principally or wholly by either Province, other duties could be so devised and regulated as to reduce any particu-

lar dis-proportion to the proper standard, and cause the Revenue laws, in the aggregate, to bear equitably on both Provinces.

It may be added that Upper-Canada will next year, have a claim for a proportion of Duties on articles consumed at Quebec, which is equally *Le Port* as that of Lower-Canada. A large part of the Shipping which annually visits Quebec, has no other object than to carry away the produce of Upper-Canada; and the Revenue derived from this source, being partly created by her trade, should also be shared by that Province.

I have the honor to be,

Sir,

Your Obedient,

humble Servant,

(Signed.) J. BABY.

To the honorable J. HALE,

Arbitrator for Lower-Canada.

A TRUE COPY.

J. BABY.

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